

**ORAL ARGUMENT NOT YET SCHEDULED**

**NO. 18-1187 (CONSOLIDATED WITH NO. 18-1217)**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**KITSAP TENANT SUPPORT SERVICES INC.,**

*Petitioner/Cross-Respondent,*

**V.**

**NATIONAL LABOR RELATIONS BOARD,**

*Respondent/Cross-Petitioner.*

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**ON PETITION FOR REVIEW FROM A DECISION OF THE NATIONAL  
LABOR RELATIONS BOARD**

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**APPENDIX FOR PETITIONER  
KITSAP TENANT SUPPORT SERVICES INC.  
VOLUME II**

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1 but there was a confusion in that it was called head of  
2 household, so we --

3 Q Oh, is that the attachment?

4 A Page 371, yeah.

5 Q So that's the job description for the head of household?

6 A Well, but the letter says it's the job description for the  
7 house manager.

8 Q Oh. Then I guess there came a time when you, when the  
9 parties did meet again?

10 A Yes.

11 Q Okay. And when was that?

12 A November 19<sup>th</sup>, I believe.

13 Q That the 26<sup>th</sup>?

14 A Yeah, yes.

15 MR. LOFLAND: Your Honor, with all due respect, Counsel  
16 has been leading and providing answers to the person about the  
17 date.

18 JUDGE POLLACK: Again, people have problems with dates.

19 MR. LOFLAND: But part of that, Your Honor --

20 JUDGE POLLACK: Suggesting dates is permissible. Go  
21 ahead.

22 Q So the parties met again on?

23 A The 26<sup>th</sup>.

24 Q And can you just tell us who the, the same people again  
25 present at this meeting?

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1 A Well, the same, the same people from the Employer and from  
2 our side myself and Tim Tharp and some of the elected  
3 bargaining team, only Lisa and Al.

4 Q I see. And was that again scheduled from nine-to-five?

5 A Yes.

6 Q And did it last, did it go from nine-to-five?

7 A I think it ended around three o'clock again.

8 Q Okay.

9 A Three-thirty, three.

10 Q Okay. So, do you recall what issues were discussed at  
11 this particular bargaining session you guys held?

12 A In November we, we reached tentative agreement on the head  
13 of household, or the recognition.

14 Q And is that General Counsel Exhibit 35? Will you take a  
15 look?

16 A Yes, it is.

17 Q And by the way, where did you get this language on the  
18 Union recognition?

19 A The Employer proposed it.

20 Q Okay.

21 A And I believe it's similar to the recognition.

22 Q From the Board?

23 A From the Board, yeah.

24 Q I see. And is this particular language on the head of  
25 household, was this position, obviously the Union agreed to it,

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1 right?

2 A Yeah.

3 Q That's what you wanted?

4 A Yes. We accepted their proposal.

5 Q Okay. Now that you had this set aside, how about other  
6 issues, contract issues that you recall being discussed?

7 A In November we, well, we discussed the discipline, which  
8 for them was two part, it's discipline at will, but for us was  
9 the one.

10 MR. FIOL: Can I just, I need to run, I need to go off the  
11 record.

12 JUDGE POLLACK: Off the record, please.

13 *[Off the record]*

14 JUDGE POLLACK: Okay, we'll break for lunch. Come back at  
15 2:00 o'clock. Off the record.

16 *[Off the record]*

17 JUDGE POLLACK: Back on the record, please.

18 Q Ms. Clifthorn, when we left for our break, we were  
19 discussing a bargaining session that took place on November 26,  
20 2012, do you remember that?

21 A Yes.

22 Q And we discussed General Counsel's 35, which is that  
23 tentative agreement, 35?

24 A Yeah, for Union recognition.

25 Q Correct. Then there was, we started on a discussion of

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1 what other articles, bargaining articles were discussed at that  
2 meeting. Can you tell us, do you recall?

3 A I recall we talked about wages and some of the economic  
4 issues and the Employer said that they were going to pay the  
5 rates they pay now. We discussed the discipline article and  
6 Mr. Lofland said that they were not going to, said, as I  
7 recall, that they were not going to give up their ability to  
8 let people go and I believe we also discussed the personnel  
9 files again.

10 Q And do you recall discussing of this topic, such as, say  
11 arbitration?

12 A Such as what?

13 Q Arbitration?

14 A We, yeah, we did discuss arbitration sort of together with  
15 at will, just that arbitration wasn't something they were going  
16 to agree to.

17 Q And what's, what's the, what did the Union, what's the  
18 Union's position on arbitrating?

19 A That it is cheaper for everyone to go to an arbitrator  
20 then it is to go to a judge.

21 Q Okay. And then you also said that it was coupled together  
22 with discipline.

23 A Just, we were talking about sort of the two together.

24 Q Right.

25 A Linked concepts.

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1 Q Anything specific that you recall being discussed on  
2 discipline?

3 A Just what I already said about the fact that they weren't  
4 going to let go, let, give up their ability to let people go  
5 and they were not going to agree to just cause.

6 Q I see. Now you testified that you believe that this  
7 session ended at about three p.m.

8 A I said three or three-thirty, yeah.

9 Q Three or three-thirty, right, around.

10 A Yeah.

11 Q Okay. So when the parties finished their negotiations for  
12 that day, was there an agreement as to when you would resume  
13 negotiations?

14 A Yes, Mr. Lofland had proposed the dates in November and  
15 then a date in December, so we'd agreed on a date in December  
16 and it was, I think it was December 18<sup>th</sup>.

17 Q And if you would please take a look at General Counsel's  
18 Exhibit 36?

19 A Yes.

20 Q Okay. And that sent from Mr. Lofland on December 17<sup>th</sup>?

21 A Yes.

22 Q Can you tell us about that? Is this the first time you  
23 had heard that there would be no negotiations for the 18<sup>th</sup>?

24 A Yes.

25 Q What did you do then upon getting this, now, before I move

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1 on. The, where was, again, the negotiations all take place at  
2 the same location, right, the --

3 A Bremerton Fairfield Inn, yes.

4 Q Okay. Do you recall whose turn it was to make  
5 preparations?

6 A No, I don't recall.

7 Q So you received this e-mail, what did, his message  
8 cancelling?

9 A Yes.

10 Q Okay. And then you sent a reply, which is General  
11 Counsel's 37?

12 A Yes.

13 Q So you asked for a call later in the week to schedule  
14 January dates?

15 A Yes.

16 Q Okay. And did you receive a reply from Mr. Lofland on the  
17 December 17<sup>th</sup> request for later dates?

18 A Not, no, I did not.

19 Q So when did you get a response from Mr. Lofland?

20 A Well, I wrote him again in January.

21 Q So between December 17<sup>th</sup> and January 11<sup>th</sup>, was there any  
22 communication at all between the parties?

23 A I don't believe so, no.

24 Q Okay. Now if you look at General Counsel's 39, it's an e-  
25 mail with a letter attachment. So did there come a time when,

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1 well, discuss, tell us what, what this was about.

2 A Thirty-nine or 38?

3 Q Oh, 39 first.

4 A Okay.

5 Q And then really, it's the second page of 39, I'm sorry.

6 A Okay.

7 Q Okay. So, had there, up until this point, what was the  
8 status of the next meeting?

9 A It wasn't set yet.

10 Q Okay. So, there is a suggestion then from the 27<sup>th</sup> and  
11 28<sup>th</sup>?

12 A 27<sup>th</sup> or the 28<sup>th</sup>.

13 Q Right. And did you respond to his January 25<sup>th</sup> letter?

14 A Yes, I did.

15 Q Okay. And that's General Counsel's 41(a)? Do you see  
16 that?

17 A Yes.

18 Q And then 41(b), which is a continuation. Can you explain  
19 to us what happened where you would, with the dates of 27<sup>th</sup> and  
20 28<sup>th</sup>?

21 A Well on, we had, on the 28<sup>th</sup>, we went in and said that we  
22 accepted the 27<sup>th</sup> and had said that we were, you know, we were  
23 looking to still set other dates because we wanted to have more  
24 than one sort of plans that we were working towards something,  
25 but then the next day, found out that the 27<sup>th</sup> was, was less

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1 than ideal for some people and there was a preference for the  
2 28<sup>th</sup> and so I just wrote saying, you know, scratch what I said  
3 yesterday, can we have the 28<sup>th</sup>, and then Mr. Lofland at that  
4 point responded that he had jury duty.

5 Q Is this the first that you've heard of the jury duty?

6 A Yes.

7 Q So then the top is your response?

8 A Right. We still wanted to proceed with, with the, you  
9 know, with the first date if that worked, but we were trying to  
10 move it to the 28<sup>th</sup> still, but it depended on what his response  
11 was.

12 Q So you sent that at 12:39 p.m. on the 4<sup>th</sup>, correct?

13 A Yes.

14 MR. LOFLAND: Your Honor, with all due respect, we're  
15 going through item by item documents that have already been  
16 admitted and which speak for themselves. I question whether  
17 there is a need to go through each item?

18 MR. FIOL: Just wanted to see what happened.

19 JUDGE POLLACK: But the point is, if you're just going to  
20 have her read the e-mails, we don't need that. We've got the  
21 e-mails in evidence already. When was the next session?

22 THE WITNESS: March.

23 JUDGE POLLACK: Do you know, what date in March?

24 THE WITNESS: I don't recall, I think it was the 11<sup>th</sup> and  
25 12<sup>th</sup>.

1 JUDGE POLLACK: Okay. And was that in Bremerton?

2 THE WITNESS: Yeah.

3 JUDGE POLLACK: Okay. Can you tell me what happened on  
4 that day?

5 THE WITNESS: We had scheduled two days together for  
6 negotiations and at that point, we reached a tentative  
7 agreement on several articles and we, we told the Employer that  
8 we were seeking to create momentum to move towards a contract  
9 and reach agreement together and so they shared with us that  
10 they wanted to get the non-economic issues off the table first  
11 before talking about economic issues, so we moved considerably  
12 on, to reach their, you know, their proposals and accepted a  
13 number of, you know, proposals that weren't the best for us,  
14 but we're trying to move towards an agreement.

15 MR. FIOL: Well, Your Honor, I do want to ask a question  
16 before, that deals before this, this date, that you, in March.

17 A Okay.

18 Q It has to do with General Counsel's 41(f) and just to  
19 clarify for us about cancelling the February 21 date. Can you  
20 just tell us what that was about?

21 MR. LOFLAND: Your Honor, once again, the documents speak  
22 for itself.

23 MR. FIOL: I'm not so sure.

24 MR. LOFLAND: I haven't finished. If you simply look at  
25 the next document, 41(g), Ms. Clifthorn explains, it's all done

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1 in the documents. We're simply reading what is already in  
2 evidence.

3 MR. FIOL: I believe she's entitled to explain what's in  
4 the documents.

5 JUDGE POLLACK: Okay. Go ahead.

6 MR. FIOL: Okay.

7 A 41(f) or --

8 Q 41, well both, 41(f) and 41(g), which are related.

9 A Okay. Well, I had called, I accepted a date when Mr.  
10 Lofland had proposed a round of dates, and I had accepted the  
11 21<sup>st</sup> and then upon looking at the calendar, you know, really  
12 realized that it wasn't enough time for the workers to have  
13 enough time off, as well as it was covering a four day holiday  
14 weekend, so that we weren't going to have time to be as fully  
15 prepared as we needed to be and so I thought that it was better  
16 if we were really going to agree on two dates and create some  
17 momentum, that we wait for the March 11<sup>th</sup> and 12<sup>th</sup> dates.

18 Q And why would, why would that date not work for the, for  
19 the workers?

20 A Well, the Employer's policy was that they needed 21 days,  
21 you know, to request time off and we didn't want to have any  
22 more issues with that, so...

23 Q I see.

24 JUDGE POLLACK: You testified that you reached certain  
25 tentative agreements on March 12<sup>th</sup>. Do you have those?

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1 MR. FIOL: I have that here now, that's why I went  
2 upstairs before just to make copies and mark them.

3 **(General Counsel's Exhibit 41(h), marked for identification)**

4 Q This is now 41(h). Okay. I'm showing the witness a  
5 document that's marked for identification as 41(h). Ms.  
6 Clifthorn, do you recognize this document?

7 A Yes, I do.

8 Q Can you tell us what it is?

9 A It looks to be our various proposals we exchanged over the  
10 two days.

11 Q Does this, oh, and if you take a look in response to the  
12 Judge's question, does it contain tentative agreements?

13 A Yes, it does.

14 MR. FIOL: I move for the introduction of 41(h).

15 MR. LOFLAND: If I may have a moment, please.

16 JUDGE POLLACK: Sure.

17 MR. LOFLAND: Okay. Oh, I'm sorry, I have no objection.

18 MR. JENSEN: Well, Your Honor, I have no objection as long  
19 as somebody specifies specifically what's the in here, I will  
20 tell you, I've thumbed through it and I can make an educated  
21 guess, but I'd be guessing at specifically what's the TA in  
22 here..

23 MR. FIOL: Well, we could ask the witness.

24 MR. LOFLAND: Does that mean you're not, not agreeing to  
25 it?

1 MR. JENSEN: Yes, I'm not agreeing to it until we what's  
2 TA'd. I won't object to it if anybody testifies what is TA'd,  
3 but I can't tell from this.

4 MR. LOFLAND: Well, it seems to be fairly simple, Judge.  
5 It's marked in those places, it says TA and the date --

6 JUDGE POLLACK: All right. Let's go through it. Can you  
7 go through the document and indicate to us where there was an  
8 attempt of agreement?

9 THE WITNESS: Yes, so, the first one is article --

10 MR. LOFLAND: You have to speak up.

11 THE WITNESS: Sorry, the first one is Article 5, Hiring.

12 MR. JENSEN: Okay, give me a moment to...

13 JUDGE POLLACK: And is that tentative agreement apply to  
14 that whole page?

15 THE WITNESS: Yes.

16 JUDGE POLLACK: Okay.

17 THE WITNESS: And then Article 7, Seniority.

18 JUDGE POLLACK: And again, it's a tentative agreement for  
19 the whole page?

20 THE WITNESS: Yes. Article 8, Layoff and Recall, again  
21 for the whole page.

22 JUDGE POLLACK: Thank you.

23 THE WITNESS: Article 9, Employee Training and  
24 Development.

25 JUDGE POLLACK: Okay. That whole page?

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1 THE WITNESS: Yes.

2 JUDGE POLLACK: All right. There is some handwriting —

3 THE WITNESS: We both signed off on all of it.

4 JUDGE POLLACK: Could you read that for me?

5 THE WITNESS: I will take a stab, that's Mr. Lofland's  
6 handwriting. I get bonus points for this. "That is not  
7 available at employee's home office."

8 JUDGE POLLACK: Okay.

9 THE WITNESS: And the other one is "One way."

10 JUDGE POLLACK: That I could read. Okay. Thank you.

11 THE WITNESS: And then Article 10, was a tentative  
12 agreement for the whole page and again the handwriting, "We  
13 both agreed to."

14 JUDGE POLLACK: Okay. And then Article 11, Employee  
15 Files, is for the whole page.

16 Q BY MR. FIOL: Excuse me for, I just wanted to, looking at  
17 Article 10, for example, did, that, you can disregard the  
18 second page because --

19 A Right, that was --

20 Q Yeah.

21 A -- a proposal we made and then after that, we TA'd on it.  
22 So then Article 11, we tentatively agreed to that whole page  
23 along with the handwriting. And then Article 12, Employee  
24 Privacy, we reached tentative agreement on that page as well.  
25 And then, I think there was one more. Article 18, Reasonable

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1 Accommodation. We reached tentative agreement on that page.

2 And then Article 19 is not a tentative agreement.

3 JUDGE POLLACK: It says, "Never mind."

4 THE WITNESS: Right.

5 JUDGE POLLACK: Okay.

6 A Article 20<sup>th</sup>, we reached tentative agreement on that page

7 and the words that are in, under, in the box that says, "To

8 delete," and we reached, we agreed on that. And I think that

9 was the last one, but -- no, Article --

10 Q And I think --

11 A -- 24.

12 MR. JENSEN: Say what?

13 A Article 24, Union Management Committee. We reached

14 agreement on that page, including the handwriting about meeting

15 by telephone. And that's -- oh, and then the Drug and Alcohol

16 Workplace Proposal from the Employer, we agreed to it, those

17 two pages.

18 MR. LOFLAND: That Article 10?

19 THE WITNESS: Article X, yes, yeah.

20 MR. LOFLAND: In the back, okay.

21 THE WITNESS: In the back.

22 JUDGE POLLACK: And that's two pages?

23 THE WITNESS: Two pages, yeah, so we tentatively agreed to

24 those two pages.

25 JUDGE POLLACK: Okay.

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1 THE WITNESS: And then the Employer's X1 Time Clocks, we  
2 agreed to that proposal.

3 Q And which one is, which article?

4 A Article --

5 MR. JENSEN: Roman 11.

6 THE WITNESS: Yeah, thanks.

7 JUDGE POLLACK: All right, and then there is a handwritten  
8 --

9 THE WITNESS: And then --

10 JUDGE POLLACK: -- page?

11 THE WITNESS: Yeah, Article X, or Article Roman Numeral  
12 12, about the Employer's cell phone use proposal, we reached  
13 agreement on that. And then Roman Numeral 13, Time Clocks, the  
14 Employer's proposal on time clock use, we tentatively agreed to  
15 that.

16 JUDGE POLLACK: Okay.

17 MR. JENSEN: I withdraw, I have no objection at this  
18 point.

19 JUDGE POLLACK: Very good. Okay, 41(h) is received.  
20 Thank you.

21 **(General Counsel's Exhibit 41(h), received into evidence)**

22 Q BY MR. FIOL: Now there was, there are other articles,  
23 correct, that were not tentatively agreed to?

24 A Yes.

25 Q Can you tell us which ones were those?

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1 A Everything else in 41(h) that I did not reach a tentative  
2 agreement to.

3 Q What was your position at that time regarding management  
4 rights?

5 A We, we were trying to create momentum towards reaching an  
6 agreement and so we were willing to consider some of the more  
7 expansive language that they were looking at, but we did not  
8 reach an agreement on it. We were, so...

9 Q What do you mean, can you please explain?

10 A We were trying to create significant momentum towards  
11 reaching a final agreement, a complete agreement, so we, I  
12 believe we gave them a proposal back on employee, Employer  
13 rights that this, I don't know if it is in this packet, but I,  
14 I believe we did do that either in this session or the April  
15 session.

16 Q I see. What was the position then on discipline?

17 A We really firmly held to the fact that just cause was an  
18 important part of a contract.

19 Q And at will?

20 A And at will did not belong in a union contract.

21 Q How about arbitration?

22 A We had a lot of discussion about arbitration at this  
23 bargaining session. Because, again, you know, we thought that  
24 arbitration was a, was a better process and a cheaper process  
25 for both parties.

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1 Q And you said that, you also mentioned wages and benefits?

2 Is that --

3 A Well --

4 Q That was one of the things that was still --

5 A -- they were open, right, but we, the Employer said they  
6 did not want to discuss them until we reached agreement on the  
7 non-economic issues.

8 Q So what did the Union do after hearing that?

9 A Well, we gave them a very modified proposal that we  
10 thought was financially doable by the Employer, just so they  
11 knew where our position was.

12 Q Now, the one other thing I wanted to show is this, allow  
13 me a moment. Before I ask, discuss this document, you just  
14 testified then that there was, was there a meeting, a  
15 negotiation meeting after that March 12<sup>th</sup> meeting?

16 A Yes, we met again in April.

17 Q And what was the date?

18 A I believe we met on the 4<sup>th</sup> and the 5<sup>th</sup>, two days, I  
19 believe.

20 Q Were there proposals?

21 A Yes, we exchanged, both sides exchanged proposals.

22 Q Okay.

23 MR. FIOL: Your Honor, at this, I don't have anything to  
24 show the witness. I just don't have them. So I want to limit  
25 my questions to maybe one or two more. I just don't have the

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1 document. So...

2 MR. LOFLAND: What document?

3 MR. FIOL: Oh, any document, she just testified that there  
4 were an exchange of proposals on April 4<sup>th</sup> or 5<sup>th</sup>?

5 A Two days, 4<sup>th</sup> and 5<sup>th</sup>, I believe.

6 Q So, let me ask you these questions. As of April 4<sup>th</sup> and  
7 5<sup>th</sup>, what was the Union's position regarding management rights?

8 A We still did not reach agreement on management rights.

9 Q At will?

10 A We did not reach agreement on a discipline article or to  
11 the Employer's at will.

12 MR. LOFLAND: Can I short circuit this. We propose a  
13 stipulation that there was no agreement on anything that is not  
14 shown as the witness testified that has the tentative  
15 agreements and if it is easier --

16 MR. FIOL: Yeah, no, it is.

17 MR. LOFLAND: -- just work with me --

18 JUDGE POLLACK: Okay.

19 MR. FIOL: Yeah.

20 MR. LOFLAND: -- in negotiations when we reached a  
21 tentative agreement, we would mark the article, we put the  
22 date, tentative agreement, both people would sign it and those  
23 are what reflects the tentative agreements. If there is no  
24 such document, there is no agreement.

25 JUDGE POLLACK: So --

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1 THE WITNESS: I think we did reach agreement, oh, I'm  
2 sorry, on the 4<sup>th</sup> and 5<sup>th</sup> on some things, but...

3 MR. LOFLAND: No --

4 THE WITNESS: Yeah.

5 MR. LOFLAND: I'm just talking about the documents --

6 THE WITNESS: Oh, okay.

7 MR. LOFLAND: -- that we have in front of us --

8 THE WITNESS: Yeah.

9 MR. LOFLAND: -- yes, you are correct.

10 THE WITNESS: I'm sorry.

11 MR. LOFLAND: But if they want to talk about other  
12 agreements not in those documents --

13 MR. FIOL: Yeah --

14 MR. LOFLAND: -- we can certainly do that. But I'm just  
15 trying to short circuit --

16 MR. FIOL: No, that's fine. And I just wanted to explain  
17 that I don't have any other document that, you know, would  
18 help, but I'm sure they'll come in, so the only other document  
19 I do have is this other document now that's in front of you, is  
20 this is (i).

21 **(General Counsel's Exhibit 41(i), marked for identification)**

22 A Okay.

23 Q And would you please take a second and --

24 MR. LOFLAND: I stipulate to the admission of 41(i).

25 MR. FIOL: Okay.

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1 JUDGE POLLACK: Okay, 41(i) is received.

2 **(General Counsel's Exhibit 41(i), received into evidence)**

3 MR. FIOL: Your Honor, I'm finished on the topic of  
4 bargaining, but there is a new topic that came up very briefly,  
5 if I can just take two minutes. I'm done on this, but I --

6 JUDGE POLLACK: Well, I'm not. What I need to know is,  
7 were there any bargaining sessions after April 4<sup>th</sup> or April 5<sup>th</sup>?

8 THE WITNESS: We had two mediations, we had mediation  
9 sessions, two mediation sessions.

10 JUDGE POLLACK: And when were those?

11 THE WITNESS: Those were, I can't recall the date of the  
12 first one. I believe it was in June or July of this year. And  
13 then the second one was in August 6<sup>th</sup>, 2013.

14 JUDGE POLLACK: And at these mediation sessions, I take  
15 it, were the company and union in separate rooms?

16 THE WITNESS: Yes.

17 JUDGE POLLACK: And the mediator went back and forth?

18 THE WITNESS: Yes.

19 JUDGE POLLACK: Okay.

20 Q BY MR. FIOL: And this was all, happened after the  
21 complaint at issue, there is nothing in the complaint that I  
22 could point to and introduce into evidence.

23 JUDGE POLLACK: Well, it's still part of the case.

24 MR. FIOL: Yeah.

25 JUDGE POLLACK: But I assume Mr. Lofland will --

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1 MR. FIOL: I'm showing the witness a document that's been  
2 marked for identification as General Counsel's 41(j).

3 **(General Counsel's Exhibit 41(j), marked for identification)**

4 Q And if you can just take a look at this document.

5 MR. LOFLAND: I need a moment too to read through it.

6 JUDGE POLLACK: Okay. Let me know when you are ready.

7 MR. LOFLAND: I'm ready.

8 JUDGE POLLACK: Okay, Mr. Fiol?

9 MR. FIOL: I was waiting for...

10 *[Long pause]*

11 MR. FIOL: Your Honor, I'm going to withdraw General  
12 Counsel's 41(j)

13 JUDGE POLLACK: Okay.

14 **(General Counsel's Exhibit 41(j) withdrawn)**

15 MR. FIOL: And with that, I have no further questions.

16 JUDGE POLLACK: Very well, Mr. Jensen?

17 MR. JENSEN: Yes sir, I need to find where I'm going to  
18 start.

19 **DIRECT EXAMINATION**

20 Q BY MR. JENSEN: Good afternoon Ms. Clifthorn.

21 A Hi.

22 Q Hi. Were you familiar with, involved in any way with the  
23 Union campaign here to organize the employees at KTSS?

24 A Yes, I knew that I would be the chief negotiator for the  
25 campaign, so I stayed informed of developments.

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1 Q Are you aware of a flyer that went out during the campaign  
2 with the pictures and names of people on the organizing  
3 committee?

4 A Yes, very familiar.

5 Q You've seen it?

6 A Yes.

7 Q Do you know whether Lisa Hennings' picture and name was on  
8 there?

9 A Yes, she was on it.

10 MR. LOFLAND: Objection. The document speaks for itself.  
11 It's the best --

12 MR. JENSEN: The document does not --

13 MR. LOFLAND: -- the best evidence.

14 MR. JENSEN: The document is not in evidence.

15 JUDGE POLLACK: I know it's not in evidence. Is it  
16 available?

17 MR. JENSEN: I don't have one that's available. I don't  
18 know where it is.

19 THE WITNESS: I have a copy in Olympia, but...

20 JUDGE POLLACK: Do you have a copy here?

21 MR. JENSEN: I'll just, I'll just move on.

22 JUDGE POLLACK: Okay.

23 Q You talked, you were talking to Mr. Lofland you said about  
24 having a bargaining team elected. Did you tell him who would  
25 be electing the team?

1 A Yes, I told him the workers would be electing a bargaining  
2 team.

3 Q You also talked about a policy, you talked about a company  
4 policy that employees needed 21 days advance notice to be  
5 released for bargaining. Do you remember talking about that?

6 A Yes I do.

7 Q What are you basing that on? Where did you learn that?

8 A Well that's, that's the written policy. It wasn't  
9 necessarily the practice as we understood it from the workers,  
10 but given the disciplines that happened around requesting  
11 leave, from Ms. Driskell, we wanted as much as possible to  
12 follow what their written policy was, even if that wasn't the  
13 practice.

14 Q Where did you, do you think you've seen in writing a 21  
15 day policy?

16 A It was in their Personnel and Procedures Manual.

17 Q Did you discuss a 21 day policy with Mr. Lofland at all?

18 A No, we didn't. We sent advance notice.

19 Q So you just worked on the assumption of 21 days?

20 A Right.

21 Q You had some testimony some documents referring to the,  
22 quote, the Board and KTSS and you'd asked Mr. Lofland, I  
23 believe, who that was?

24 A Yes.

25 Q On a number of occasions?

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1 A I believe I asked twice in writing.

2 Q Okay. Did you ever get an explanation of what the Board  
3 was other than it's the Board of Directors?

4 A No.

5 Q You had, there was some testimony and some documents came  
6 in, General Counsel Exhibits where they were the attachments to  
7 an e-mail you testified?

8 A Yes.

9 Q And we don't have those e-mails. Were those e-mails  
10 anything other than just a transmittal sentence said attached -  
11 -

12 A No, it said, it was usually an e-mail from his, Mr.  
13 Lofland's secretary or someone at his law firm saying, please  
14 see attached letter from Mr. Lofland dated this date.

15 Q So we're not missing anything of substance there?

16 A No.

17 Q Okay.

18 MR. LOFLAND: Well, no, I'll catch it later. Excuse me.

19 Q You'd asked for a number of, excuse me, for a list of the  
20 bargaining unit employees from the Employer, correct?

21 A We asked on multiple occasions, yes.

22 Q Okay. And you, at some point you got that list, correct?

23 A Yes, we got various lists.

24 Q And do you, do you remember the approximate number or the  
25 exact number of employees on the list?

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1 A Around a hundred and, a hundred, around a hundred.

2 Approximately.

3 Q July 13 was your first meeting, is that correct?

4 A Yes.

5 Q Okay. And so you then walked through, the Union brought  
6 its first proposal?

7 A Yes.

8 Q And you walked through all the items?

9 A We walked through each article, yes.

10 Q And did you attempt to engage the Employer in discussion?

11 A We asked if they had questions, we asked if they, you  
12 know, wanted to understand why we were proposing this. We  
13 tried.

14 Q And the Employer said?

15 A No questions at this time.

16 Q Did they have any, any verbal reaction to any of your  
17 proposals?

18 A Yes, after they came back from caucus, they described our  
19 proposal as pie in the sky and unrealistic for this industry  
20 and so forth.

21 Q Did they explain their basis for that position?

22 A No.

23 Q Other than the general characterization as pie in the sky  
24 and unrealistic, did they have any specific reaction to any  
25 proposals?

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1 A Yes. They, I mean, in general they said that seniority  
2 wasn't something, I think, that would work for the, for the  
3 industry and that at this time they could not see themselves  
4 sort of, you know, their initial reaction was to the stuff like  
5 arbitration and Union security.

6 Q What, what did they say about, you proposed arbitration,  
7 the standard grievance --

8 A A grievance procedure that ended in arbitration.

9 Q And what did they say specifically about that?

10 A At July 13<sup>th</sup>?

11 Q Yes, if you recall.

12 A I don't recall what they said specifically on July 13<sup>th</sup>. I  
13 mean, throughout bargaining on many days, they said that  
14 arbitration wasn't something that they wanted to agree to,  
15 but...

16 Q Did they say why?

17 A Mr. Lofland said he preferred judges to arbitrators.

18 Q Did he explain why?

19 A He said that a judge, that an arbitrator could order  
20 someone back to work, you know, and that that wasn't something  
21 that they were willing to risk. That was the, the gist of the  
22 position.

23 Q You testified that -- strike that. Did you, you testified  
24 that there were some new policies that the company advocated, I  
25 think you said, drug and alcohol?

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1 A There were a number of new proposals that they brought  
2 during the course of our negotiations to date. Drug and  
3 alcohol policy, a time clock policy, two different time clock  
4 policies introduced at two different times and then a cell  
5 phone policy were all new policies.

6 Q When you say, "New," you mean new that they didn't have  
7 before?

8 A They don't currently have a drug and alcohol policy, they  
9 don't have a policy for time clocks on day shift or night shift  
10 and they did not have a policy around cell phone use to the  
11 best of my knowledge.

12 Q Do you have in front of you General Counsel Exhibit No.  
13 20?

14 A I will in a minute. Yes, I do.

15 Q Okay. So that's the Union's initial proposal, correct?

16 A Yes, it is.

17 Q Okay. And did, was, did the Union discuss or mention each  
18 of these articles to the Employer in that first session?

19 A Yes, we gave one at a time.

20 Q So for, for the whole 29 articles?

21 A Preamble plus 29 articles, yes.

22 Q Okay. Did any of these, any of these proposals merit any  
23 discussion beyond what you just told me about judges and  
24 arbitrators, any discussion from the Employer?

25 A Well, I think given that when it came, when we arrived in

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1 March there was still a lack of understanding about what we  
2 were proposing, I think, yes, their clearly needed to be  
3 discussion about what we were proposing.

4 Q Okay, but I was asking some different.

5 A What's that?

6 Q I was asking was there any discussion, any questions from  
7 the Employer, any discussion at all about what you meant or why  
8 it was acceptable or not acceptable?

9 A There wasn't a single question on any of these, no, on  
10 that date, July 13.

11 Q Would you find General Counsel Exhibit No. 22 in front of  
12 you?

13 A Yes, I have it.

14 Q And was that the first Employer proposal, as I understand  
15 it?

16 A Yes, it was.

17 Q Okay. And has there been additional proposals since then  
18 from the Employer?

19 A Yes, there have been.

20 Q Okay. When were those presented?

21 A Well, there was a complete set given on August 3<sup>rd</sup>. There  
22 was a complete set given on October, I'm sorry, well, August 3<sup>rd</sup>  
23 in advance of August 6<sup>th</sup> negotiations. There was one provided  
24 October 12<sup>th</sup>, I believe, for, in October 16<sup>th</sup> negotiation session  
25 and then at subsequent negotiations we, you know, dealt with

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1 each issue by issue until more recently when they again  
2 provided a complete package.

3 Q Okay. Now if you'll look at General Counsel 22 and that's  
4 dated August 3, but as I understand your testimony, that was  
5 presented to you on August 6<sup>th</sup>?

6 A No, it was e-mailed to us on August 3<sup>rd</sup> --

7 Q And for the August 6<sup>th</sup> --

8 A -- on a Friday for a Monday, yeah.

9 Q Okay. Just -- the conversations -- okay. They presented  
10 this and then were there discussions on each of these articles  
11 or any of these articles at that meeting?

12 A We had discussions about most of them, yes.

13 Q Okay. And let's look for just a moment, if you could, I  
14 guess this is a reference to pages in the right column there.

15 A Yes.

16 Q On page five, Union Security, do you remember a discussion  
17 about Union security?

18 A Yes.

19 Q What was said by the two parties on Union security?

20 A Well, the Employer said that they did not want to have a  
21 union security at this time and that they were, and we said,  
22 that we asked for --

23 Q Let me interrupt one second.

24 A Oh, sorry.

25 Q Did they say why?

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1 A I don't recall if it was at the August 6 or if it was at  
2 September 6<sup>th</sup>, but at some point Mr. Lofland said that he had  
3 had workers who had to quit because they were afraid of paying  
4 union dues, but he did not share those names with us.

5 Q Did you ask him?

6 A Yes.

7 Q All right, continue on with Union security, I interrupted  
8 you.

9 A Well our position, we asked to see other examples of  
10 contracts in this industry, you know, without union security.

11 Q And?

12 A We were not provided with those.

13 Q Remember anything else the Union said about Union security  
14 as to what --

15 A In general or on August 6<sup>th</sup>?

16 Q Well, actually August 6 and you can take it forward to  
17 this day.

18 A Well I think I, as I already said, that at some point  
19 they, their, the Employer's concern became about the cost of  
20 doing dues deductions, not just aside from whether or not to  
21 have Union security, that if they even agreed to dues check  
22 off, that it would be cost prohibitive and so we asked for the  
23 name of their payroll company and I think after many months,  
24 they recently provided that to us.

25 Q When did you get that information?

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1 A I believe it was at the summers, in advance of this  
2 summers' mediation session, the first one.

3 Q And have you done anything with that information?

4 A We tried figuring out from that company's website whether  
5 \$10 was reasonable, but we were unable to determine that.

6 Q And the \$10 was supposed to --

7 A Per employee, per deduction, so if they were paid, you  
8 know, each employee would have to, the company would have to  
9 pay \$10 for that deduction, was their assertion.

10 Q Okay. Now you said a moment ago, then the company's  
11 concern was about the finances here. Did they ever come off of  
12 their position that they just didn't want union security?

13 A No.

14 Q Okay. So philosophical problems and financial problems --

15 A Yes, both were introduced.

16 MR. LOFLAND: Leading.

17 Q Has, has --

18 MR. LOFLAND: Hold it.

19 JUDGE POLLACK: I'll let it stand. Don't, go ahead.

20 Q Has the Union, has the Employer changed its position in  
21 negotiations yet on that?

22 A No.

23 Q Has the Union made any changes in its position on union  
24 security?

25 A I believe that we have proposed some simpler dues check

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1 off process, we've moved on what sort of information we had  
2 asked for and I believe that we also changed our language about  
3 what happened to folks who were not providing union dues, so  
4 yeah, I believe we made changes.

5 Q Okay. As to page 20, if you would turn to that. And  
6 that's the Employer's proposal, it says, "At will employment,"  
7 starting on the August 6 meeting and you take it forward to  
8 this very date, if you have some recall, did the Employer  
9 justify or explain why it thought it should have at will  
10 employment?

11 A Yes. They said that, as I've testified, that they, you  
12 know, wanted the ability to let people go and that they, that  
13 that was very important to them and that given that these were  
14 vulnerable adults, they wanted to be, you know, able to let  
15 people go, it wasn't as, it was, their position was that it was  
16 different from other industries, so that, that's been their  
17 position and I believe remains their position.

18 Q Has there been any, let me ask that question, has there  
19 been any changes in position that you've seen?

20 A Well we've, they, their most recent position, which is  
21 this summer after this complaint was that there would in  
22 limited circumstances, there could be sort of a just cause  
23 process, but it excluded, at the end of the day, they would  
24 still have the ability to let people go, it was still at will  
25 for, at the end of the day. But there was sort of a process

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1 for discipline.

2 Q Was the process, was there to be a grievance procedure  
3 somewhere, some kind of just cause standards?

4 A There were going to be basic just cause standards and  
5 limited circumstances and I, I haven't, didn't look at that  
6 this week so I can't recall specifically, but it was limited to  
7 specific circumstances.

8 Q And who was going to be under their, that proposal? Who  
9 would be the decider, the ultimate decider whether they could  
10 let someone go or discipline?

11 A The Employer.

12 Q And when was that first offered to you?

13 A At the first mediation, mediation session this summer.

14 Q June or July?

15 A I believe that's when it was, but...

16 Q Has, has the Union -- so your proposal, your response  
17 their at will was what, grievance arbitration --

18 A I'm sorry. Can you restate the question?

19 Q Your counterproposal, your counter position was for a  
20 standard, progressive discipline?

21 A Right. We had a, we, I believe our latest proposal was a  
22 very, you know, a fairly simply just cause process.

23 Q Progressive discipline?

24 A Right.

25 Q And was final and binding arbitration --

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1 A That was a grievance procedure that then would result in  
2 final and arbitration.

3 Q That would be available at the end?

4 A In all cases there would be arbitration, yeah.

5 Q Has the Union made any movement or offered to move in its  
6 position on, from its initial proposal?

7 A On arbit, on a grievance procedure?

8 Q Grievance procedure, at will employment, just cause, that  
9 area?

10 A I think that we've made movement in terms of trying to  
11 simply the process and, but otherwise, you know, we, the, in  
12 terms of a principle, we've held firm that just cause and file  
13 a grievance procedure ending in arbitration is important to us.

14 Q Page 21 of that same document says, "Discipline," this is  
15 the Employer's proposal and help me what you just said, have  
16 there been any changes in the Employer's position, let, let's  
17 say to this date --

18 A Yes.

19 Q -- initially?

20 A Yeah, to this date there have been, they have proposed,  
21 it's very similar but they have said that, you know, we both  
22 are moving towards a progressive discipline step, step system.

23 Q So what, what, what have they said to move off of their  
24 initial position?

25 A So, wait --

1 Q What, if any change in their position has there been on  
2 discipline since you first got this document on August 3?

3 A There's words that have changed around on here, but  
4 otherwise, it's we're moving towards what they have, so...

5 Q I think, okay. I want you to listen carefully.

6 A Okay.

7 Q I'm not asking you what you thought, I'm asking what they  
8 had done, okay? What, if any changes, have they offered since  
9 this August 3 document on the disciplinary?

10 A In terms of a written proposal, I think it, we're  
11 remarkably similar to where we are on this proposal, but I  
12 don't recall if there's --

13 Q You don't recall them making changes?

14 A I don't recall if they made changes, yeah.

15 Q Okay. Has the Union made any movement in terms of moving  
16 from where you were towards where they are?

17 A Yes, I believe our latest proposal is very similar to this  
18 page.

19 Q And your latest proposal is about when?

20 A The, either April or the first mediation session.

21 Q Okay. Are there more sessions set as we sit here today?

22 A No. I need to respond to Mr. Lofland when I am back in  
23 the office after this week for dates.

24 Q What has he done that you need to respond to?

25 A He asked on Tuesday for additional dates and I said that

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1 we would, I haven't responded to him because I've been out of  
2 the office.

3 Q Okay. And what was, that was last Tuesday?

4 A No, this week on Tuesday.

5 Q Two days ago?

6 A Uh-huh.

7 Q Or one day, two days ago?

8 A Yes.

9 Q Okay. Prior to that one, was the last communication  
10 between the parties on dates?

11 A Well, we met on August 6<sup>th</sup> for mediation and then we, Mr.  
12 Lofland and I exchanged e-mails the end of August where I said  
13 I was out of the office. Again, I was on holiday, and that I  
14 would, I needed to get back to him with some dates the end of  
15 September and I was preparing for a training this week and I  
16 neglected to get back to him at the end of last week with dates  
17 for the end of September, so...

18 Q Okay. Now I'd ask you to turn to page 27 in that same  
19 document.

20 MR. LOFLAND: Page or exhibit?

21 Q Grievance procedure --

22 JUDGE POLLACK: Page.

23 MR. LOFLAND: Page?

24 Q -- 27. And take a moment to look at that, an extended  
25 article. And when you're done, you can look up. Okay, so

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1 last question and I'm going to refocus my exam, my questions to  
2 her in another area.

3 JUDGE POLLACK: Go ahead.

4 MR. JENSEN: Thank you, sir.

5 Q Okay. So, Ms. Clifthorn, again, let's go back to this  
6 grievance procedure.

7 A I'm sorry, which, where is that?

8 Q I think it was on page 27.

9 MR. LOFLAND: Are we still talking about Exhibit 20?

10 MR. JENSEN: I'm sorry, yes. Twenty-two, General  
11 Counsel's 22.

12 A I'm sorry, what page did you say?

13 Q Twenty-seven.

14 A Okay.

15 Q There are several pages there.

16 MR. LOFLAND: If you could bear with me just a second.

17 A The grievance procedure?

18 Q Yes ma'am.

19 A Okay.

20 MR. LOFLAND: All right, I'm with you and what page?

21 MR. JENSEN: Twenty-seven it begins on.

22 MR. LOFLAND: Thank you.

23 Q Ms. Clifthorn, from the time you first received this  
24 document from the Employer, through the end of March, has there  
25 been any substantive change in the Employer's position?

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1 A No, there was not.

2 Q Has the Union made any movements at all in the area of  
3 this proposal in terms of grievance?

4 A I believe that we have simplified our process, but  
5 otherwise, that's what we've done.

6 Q How, how have you simplified it?

7 A In terms of sort of what, how much information we're  
8 putting in, in terms of the contents and what has to be there,  
9 what doesn't have to be there, but, we took out our definition,  
10 I think.

11 Q Definition of what?

12 A We simplified the definition of what a grievance was, for  
13 example.

14 Q In what way?

15 A This is their proposal. I believe if you looked at our  
16 proposal, you know, we had a lot longer definition and we  
17 shortened it, so...

18 Q Does it favor one side or the other?

19 A No, we were just trying to make things simpler and cleaner  
20 and --

21 Q Okay. If you would turn to page 32, Employer's  
22 compensation proposal in that article. You got that in front  
23 of you?

24 A Yes, I do.

25 Q Okay. First of all, has there, has there been any change

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1 that you are aware in the Employer's compensation proposal from  
2 the date of this first document through the end of March?

3 A No, there was not.

4 Q Okay. Item No. 2, it says, "Current employees, except  
5 nightshift will be red circled." Do you know what that means?

6 A No, I do not.

7 Q Has there been any discussion, any inquiry from the Union  
8 to the Employer what that means?

9 A Yes, we asked what that meant and it meant, and the, Mr.  
10 Lofland, the Employer's attorney responded that being red  
11 circled means they are red circled.

12 Q When did you ask that question?

13 A I believe it was August 6<sup>th</sup> or September 6<sup>th</sup> of last year.

14 Q Under "Rate of Pay," and by the way, has the Union made a  
15 compensation proposal yet?

16 A Well, we, we made several different proposals related to  
17 compensation, so...

18 Q What do you mean by that?

19 A We proposed a holiday article, a benefits article, the  
20 rate of pay, a leaves, so I think we had four or five different

21 --

22 Q When did you first make those economic proposals?

23 A July 13<sup>th</sup>.

24 Q Okay.

25 A Of last year.

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1 Q And has the Union made movement in those areas since?

2 A Yes, we've made significant movement.

3 Q Can you explain this to us?

4 A So I believe we've, we started off asking for four or five  
5 holidays and I think now we're at three. They have two  
6 currently. We started, we started off asking, I think, you  
7 know, a tiered system with five different tiers and I think now  
8 we're down to asking for, as of April, we were down asking for  
9 three tiers and I think we moved several dollars an hour  
10 difference.

11 Q You've reduced your demand the several dollars an hour?

12 A Several, yes.

13 Q On this proposal here, the Employer, under the number one,  
14 "Rate of Pay," the direct service staff starting 10.09, how  
15 does that relate to the status quo as negotiations began at  
16 KTSS?

17 A That is the status quo.

18 Q That was, that's what they were earning at the time?

19 A Yes.

20 Q In other words, the Employer is proposing no change there?

21 A Well, for direct service staff, yes, but the nightshift  
22 cap is a change.

23 Q Okay. I'll get to that right now.

24 A Oh, sorry.

25 Q Okay. Night shift cap, the Employer proposal was 10.25 an

1 hour, correct?

2 A Yes.

3 Q And you said, you said something about a change. Tell us  
4 about that.

5 A Well that's, there are people on nightshift making more  
6 than that now.

7 Q So this, they produced, they suggested, excuse me, they  
8 proposed a reduction in pay then?

9 A Yes.

10 Q Did you, was there discussion of why?

11 A Yes. We have a nightshift member on the bargaining team  
12 who actually asked a lot of questions about that and the  
13 Employer stated that nightshift was easy and that they, they  
14 needed to cap it because it was easier work.

15 Q Anything other than that or is that the sum total that you  
16 recall about that?

17 A That's the sum total of what I recall over bargaining.

18 Q Okay. How many people work nightshift versus, versus  
19 dayshift, if you recall?

20 A I actually don't recall at this moment.

21 Q Do you know what the nightshift is? Is there a standard  
22 nightshift?

23 A There is, yes, so for -- do you want me to say what that  
24 is?

25 Q Sure, please.

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1 A Okay. So the bulk of the workers work in supported living  
2 light and they have three shifts, so seven-to-three, three-to-  
3 eleven and eleven-to-seven. So nightshift was eleven-to-seven  
4 on Monday through Friday and then there was Saturday, Sunday  
5 was seven-to-seven and then seven-to-seven, the two shifts.

6 Q Okay. Item number three talks about the Employer  
7 reserving certain rights to reduce rates. Was there any  
8 discussion about this between the Union and the Employer at any  
9 time in negotiations up through March?

10 A Yes, we had proposed language that if the rate went down  
11 or up that we would meet to bargain and so they had proposed  
12 that only, if it went up, that we wouldn't be meeting, but if  
13 it went down, we would, we would, that we would, that they  
14 would make the change, not that they would meet with us.

15 Q Okay. And then this item three, I understand, I gleam  
16 from your previous answer that they haven't changed that  
17 position up through the end of March?

18 A No, they have not.

19 Q Number four, shall eliminate the current position, we do  
20 have, we do have something in the record about that. We, you  
21 did reach a TA on that, something different on November 26,  
22 correct?

23 A Yes, we reached agreement that the current bargaining unit  
24 was direct service and head of households.

25 Q Okay. Please turn to page 23 for a moment, head "Employee

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1 Leave." If you want to take a moment and look that over and  
2 familiarize, re-familiarize yourself with that issue.

3 A Okay.

4 Q Okay. Had, had, through the end of March, have the  
5 Employer moved from this, these positions on employee leave?

6 A Well, after August 3<sup>rd</sup>, they submitted a proposal  
7 regressing back to January 30<sup>th</sup> instead of the four, instead of  
8 the 21 days and then after that they moved back again, I  
9 believe in, to the, well, they verbally said that they would,  
10 they would move back to 21 days. I don't recall if they  
11 submitted a proposal.

12 Q Are, are you --

13 A So in number five --

14 Q -- on page two there?

15 A Right, on page two.

16 Q Explain the change.

17 A So this proposal says that you have to submit 21 days in  
18 advance for leave. Their next proposal on October 16<sup>th</sup> was that  
19 you had to submit by January 30<sup>th</sup> of the year, even though we  
20 both had, we had the same language around 21 days in advance,  
21 but then they switched to January 30<sup>th</sup> and so we had  
22 conversations in the fall, in November and then in March about  
23 the fact that we liked where we were at with 21 days and they  
24 verbally said that they would move that back.

25 Q Come back the way it was?

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1 A Uh-huh.

2 Q Okay. Now on this employee leave proposal of the  
3 Employer's, how does that compare with what the status quo was  
4 at the time for the bargaining unit?

5 A It is the status quo.

6 Q And what, did the Union propose a more generous leave?

7 A Yes, we had proposed sick leave. Right now they have no  
8 sick leave and so we had proposed having five days of sick  
9 leave for our fulltime workers and prorated for part time  
10 workers.

11 Q And what about the amount of vacation?

12 A We had proposed additional vacation. We, we've moved on  
13 how much we've asking for, but we are asking that they, that  
14 there be a third tier of vacation days.

15 Q I'm not sure if I asked you if the Employer moved off of  
16 this proposal other than what you've just described about the  
17 21 days.

18 A No, they have not.

19 Q Okay. Till the end of March?

20 A Yeah, no they have not.

21 Q And how, how is the Union, specifically, what's the Union  
22 moved on?

23 A We've reduced how much sick leave we were asking for and  
24 we've reduced how much vacation leave we were asking for.

25 Q By how much?

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1 A I don't recall at this point now.

2 Q When did you do that?

3 A We did it over, in March, yeah, I mean, yes, in March.

4 Q Turn to page 26 entitled, "Holidays." And let me start  
5 with, ask how does this compare with the status quo at what we  
6 were getting before negotiations began?

7 A This is the status quo.

8 Q Okay. Did the Union propose something more generous for  
9 employees?

10 A Yes. WE proposed four holidays and that the workers who  
11 did not, who were not scheduled to work on that day would also  
12 be compensated for a holiday and then we, we've moved down to  
13 three holidays.

14 Q Okay. Has, since you've received this document from the  
15 Employer until the end of March, had the Employer moved from  
16 its position?

17 A No, they have not.

18 Q And you've just explained how you moved --

19 A And actually, I'm sorry, I think, we actually asked for  
20 five holidays and now we're at three, yeah.

21 Q Okay.

22 A Or as of March, we were at three.

23 Q All right, page 33, please. It says, "Benefits." Let me  
24 start by asking you, as you entered negotiations, what's the  
25 status quo at the time or the benefits that employees received,

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1 unit employees?

2 A There is a healthcare, dental and vision plan. Twenty-  
3 four workers as of last year were in the healthcare plan. I  
4 don't recall how many were in the dental or vision.

5 Q And what, if anything, had the Union proposed?

6 A We proposed last fall in 2012 having a, putting together a  
7 trust together so keeping the status quo with, with their  
8 proposal, with their healthcare plan and their other benefits  
9 until both, until both parties had time to meet and explore  
10 that together. We had originally proposed in year January 1,  
11 2014, so that we would have a year to work together towards  
12 that and so, and then in March we, we said, just keep the  
13 status quo with healthcare.

14 Q So if you're saying, keep the status quo they had, I take  
15 it then the Employer hadn't moved in that time period?

16 A They, so they subsequent to August 3<sup>rd</sup> proposed what they  
17 had now. In March they told us that they were going to have to  
18 look at reducing the healthcare costs.

19 Q In March they said they'd have to look at reducing?

20 A Reducing what they were paying, yeah.

21 Q Did they propose a reduction or just say they may have to  
22 look at it?

23 A Just verbally said they had to look at it.

24 Q And I, I didn't understand when you said you had proposed.

25 A So, we had proposed keeping the status quo, but at the

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1 time, once we reached agreement on a contract working together  
2 to create some sort of mutual healthcare plan and then that  
3 would go into effect, into effect January 1, 2014.

4 Q Because you'd come off that and gone along with the  
5 proposals, is that what I hear you say?

6 A We had, we said, we proposed keeping the status quo,  
7 right.

8 Q So that basically agreeing with where they are on this  
9 piece of paper?

10 A Not on this piece of paper. Subsequent to this they  
11 proposed keeping the status quo. This is just a, to be  
12 determined...

13 Q Okay. Okay.

14 A Yeah.

15 Q All right. Turn to page 34, "Union Obligation." "The  
16 Union shall allocate the sum of Six Million Dollars during the  
17 year," I suspect you didn't have a proposal on that, is that  
18 correct?

19 A No, we did not propose.

20 Q Okay. Has the Employer come off that --

21 A Yes, they with withdrew that proposal.

22 Q When did they do that?

23 A October 16<sup>th</sup>, I believe.

24 Q Okay. Was there discussion between the parties about  
25 where this came from, what it's for?

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1 A We discussed it on August 6<sup>th</sup>. Mr. Frey said that, ASCME  
2 had spent Three Hundred Million last year lobbying, so he  
3 thought Six Million made sense for them, ASCME nationwide, I  
4 should say.

5 Q Was there discussion on the most (inaudible) clause on  
6 page 35?

7 A We did not have extensive discussion about this proposal,  
8 no.

9 Q Where do we stand at the end of March on that between the  
10 two parties?

11 A I don't recall.

12 Q What about the term of agreement, page 37?

13 A It's still outstanding.

14 Q Is your proposal different than theirs basically or you  
15 both just waiting to see where it really comes down?

16 A We were both waiting to see where we landed.

17 Q Turn to page 38, "Alcohol and Drug Policy." Did I  
18 understand your testimony that there was no drug and alcohol  
19 policy before you started negotiations?

20 A There was not.

21 Q And this, where are the parties, the Union did, you did  
22 not have a drug and alcohol proposal?

23 A We did not make a proposal about this, no.

24 Q Where do the parties stand on that? You've agreed, you  
25 had a TA --

1 A Yeah, we tentatively agreed to it.

2 Q Okay. Similarly, time clock, you've agreed to a TA,  
3 right?

4 A We've agreed to a TA on night shift and then they later  
5 proposed time clocks for day shift and we agreed to that as  
6 well.

7 Q Okay. You mentioned in your testimony to Mr. Fiol asking  
8 you questions, you said that sometimes you brought up areas  
9 with, to the Employer and you said, said they weren't going to  
10 consider. Now do you recall specifically if he said they  
11 weren't going to do it or didn't to do it or did they say they  
12 weren't going to consider?

13 A There were several time she said they were not going to  
14 consider or there was one time he said that, which we're  
15 willing to consider is that what we pay, that which we pay now  
16 in terms of wages.

17 Q You had Union training on June 4, you testified I believe.

18 A For the bargaining team, yes.

19 Q Yes. Yes. Did you, prior to that, have any discussion  
20 with Mr. Lofland about when that would occur, that training  
21 would occur?

22 A Well, I sent him a letter saying that the, when the  
23 training would happen and asking for unpaid leave for the team.

24 Q Prior to the June 4 training you sent you a letter --

25 A Yes.

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1 Q -- telling him the date of the training?

2 A Yes.

3 Q You met on September 17, did you to negotiate?

4 A Yes.

5 Q And then October the --

6 A 16<sup>th</sup>.

7 Q 16<sup>th</sup> and again on November 26?

8 A Yes.

9 Q I can't remember, why, why did it take more than a month  
10 to get negotiate again in November?

11 A At the October 16<sup>th</sup> meeting, Mr. Lofland said that he would  
12 call me the next day to set up a day and then I didn't hear  
13 from him for a while, so we exchanged some e-mails.

14 Q You also testified that during negotiations at the October  
15 16 meeting that Mr. Frey said something along the lines of, if  
16 you want more write-ups, we'll start giving them right now,  
17 something to that affect. Do you recall that?

18 A Yes.

19 Q What was his tenor?

20 A Aggressive.

21 Q What was the context? How did that come out?

22 A We were talking about personnel files and people wanting  
23 to see what were in the personnel files, whether there were  
24 write-ups or evaluations that they weren't aware of. And I  
25 believe a worker asked about, you know, whether there were

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1 write-ups included and then he said, if you want more write-  
2 ups, you can have them starting now or you will starting now, I  
3 think.

4 Q At the Employer's, from what I understood from you, it  
5 sounded like the Employer's bargaining team at each session you  
6 were at was the same. Is that the same four people?

7 A They did except for at one session where they brought an  
8 additional attorney from Mr. Lofland's firm.

9 Q Okay. And on your side, I know you mentioned one fellow  
10 who, Gary Martell, I think you said, missed a session?

11 A Yes.

12 Q Was Tim Tharp at all of your sessions?

13 A Well, Gary, Gary Martell missed many sessions toward the  
14 second half.

15 Q Okay.

16 A Because he was no longer with the Employer.

17 Q Okay. And is he still on the bargaining team?

18 A No, he's not on the bargaining team anymore.

19 Q What?

20 A He's not with the, with the company anymore.

21 Q Okay. Otherwise, does your bargaining team remain the  
22 same as it was initially?

23 A No, Ms. Driskell is also not with the company anymore and  
24 so she has been, or Mr. Martell was replaced by a woman named  
25 Kim Smith in June of this year.

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1 Q Did Mr. Tharp go to all of the negotiation sessions?

2 A All of them except for September 17, I believe.

3 Q Do you have occasion to drive between Port Angeles and  
4 Bremerton?

5 A Oh, and I'm sorry, Mr. Devreux attended the March sessions  
6 and April sessions, as well.

7 Q Can you explain who Mr. Devreux --

8 A Mr. Greg Devereux is the Executive Director of the  
9 Federation, the Washington Federation.

10 Q What session was that he attended?

11 A Mr. Devereux?

12 Q Yes.

13 A March and April.

14 Q Oh, more than a session?

15 A Yes.

16 Q So is that, is that three occasions?

17 A Well it was, no, it was two days in March and two days in  
18 April.

19 Q Four times?

20 A Right.

21 Q March 11 and 13 and April 4, 5, something like that?

22 A Yes.

23 Q Did you have occasion to drive through Bremerton and Port  
24 Angeles?

25 A Yes, I have.

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1 Q And how long does it take you to drive, on average,  
2 traffic?

3 A I think about an hour and a half.

4 Q You said in negotiations at some point that the Employer  
5 said they weren't interested in some of your proposals because  
6 they didn't want to see the bureaucracy grow, do you remember  
7 that?

8 A I do.

9 Q What, tell me, was there discussion of what they meant by  
10 the bureaucracy, why was, why were your proposals in their view  
11 going to cause a bureaucracy to grown?

12 A Well we were, we were proposing different processes around  
13 seniority or promotions or transfers and layoff, and several  
14 times they said that, you know, it was just adding too much  
15 bureaucracy to the process, that that wasn't going to work.

16 Q Did you propose that they add more administrative people?

17 A No, I did not. We had a discussion about how much  
18 management they have already and we believed it to be high  
19 ratio already.

20 Q Did, when the Employer said they wanted the HOH removed  
21 from the unit and made into house managers, did they explain  
22 why?

23 A Yes, they said that the, that at the recognition hearing  
24 in, before the Union was certified, that there had been false  
25 testimony, that they had heard a lot of lies and that they

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1 expected the head of households to be the eyes and ears of  
2 management and they needed them to be the eyes and ears of the  
3 company, I believe, actually, is what Mr. Lofland referred to  
4 it as and so they needed a house manager to be those eyes and  
5 ears and do what they thought the head of households were  
6 doing.

7 Q Do you have a copy of General Counsel's 21? Do you have  
8 General Counsel's 21 in front of you, Ms. Clifthorn?

9 A I do.

10 Q Okay. You were asked for, things about head of household  
11 positions, recruitment postings and you said you, I think you  
12 said you got that information, right?

13 A We received the recruitment posting for head of  
14 households, yes.

15 Q When did you get that, do you know?

16 A I don't recall when we received that, at this point.

17 Q Okay.

18 MR. JENSEN: I have nothing further of this witness.

19 MR. LOFLAND: Could I have about five minutes?

20 JUDGE POLLACK: Off the record.

21 *[Off the record]*

22 JUDGE POLLACK: Back on the record, please.

23 **CROSS-EXAMINATION**

24 Q BY MR. LOFLAND: Ms. Clifthorn, are you aware that KTSS  
25 obtains the money for its services from the Department of

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1 Social and Health Services?

2 A For the, our bargaining unit members, yes.

3 Q And that the appropriations to DSHS for these services are  
4 made by the legislature, is that correct?

5 A For all of the services, yes.

6 Q And as a result of the appropriations, Department of  
7 Social and Health Services sets the rates that it will pay  
8 providers like KTSS?

9 A Yes.

10 Q And that consists of two components of a rate, and my term  
11 may not be correct, it is a direct service staff rate, is that  
12 the -- ISS rate, correct?

13 A Yes.

14 Q And the ISS rate is what goes into paying the compensation  
15 for people who provide the services to the clients of  
16 organizations, like Kitsap Tenant Support Services?

17 A Yes, although the rate varies so there is not just one  
18 rate.

19 Q The rate varies by location?

20 A Yes, for the ISS.

21 Q The ISS rate for Seattle may be different than Spokane?

22 A Yes.

23 Q It may be different that Bremerton?

24 A Yes.

25 Q Okay. But all providers within the area are provided the

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1 same?

2 A Same ISS --

3 Q Same ISS rate?

4 A They are provided the same rate, but how much they get  
5 varies by how they arrange the clients.

6 Q Well, we haven't gotten to that yet,

7 A Okay.

8 Q So bear with me.

9 A Okay.

10 Q So Department of Social and Health Services sets an ISS  
11 rate, correct?

12 A Yes.

13 Q And so, since we're in Seattle, let's say that I have a  
14 company like KTSS and you do. If we're both in the Seattle  
15 metropolitan area, we're both working at the same ISS rate.

16 A You'll receive the same rate, but how much you get varies.

17 Q Right. And I just said we'll get to that in a moment.

18 The companies also receive an administrative rate?

19 A Yes.

20 Q It covers expenses and overhead and things of that nature?

21 A Yes.

22 Q Correct? Now is it your understanding that if the ISS  
23 rate is increased, then that money must be passed on and paid  
24 to the direct service staff?

25 A No.

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1 Q Doesn't, that's not your understanding?

2 A My understanding is that companies are allowed to use the  
3 ISS rate to also pay administrators who are doing direct  
4 service work as well. Anyone who is doing direct service work  
5 can receive a portion of the ISS funds, so DSH's policy says  
6 that, you know, if a program manager, for example, 50 percent  
7 of their time is doing direct service work, they could also  
8 receive that work, so it wouldn't necessarily pass through to  
9 our bargaining unit members doing the direct work.

10 Q I didn't ask if it was passing through to bargaining unit  
11 members. I asked if it was passed, if it, if the department  
12 increased the ISS rate --

13 A Okay.

14 Q -- any increases would have to be passed on to those who  
15 are performing direct service to the clients.

16 A Yes.

17 Q And that's regardless of whether there is a contractual  
18 agreement between a union and an employer. The employer must  
19 pass on those rates if their increase to those who are, those  
20 rates, meaning ISS rates, must pass on those rates to the  
21 people who are performing work dealing directly with staff or  
22 clients?

23 A Yes.

24 Q Now, to your knowledge, has the legislature, in the last  
25 five years increased the ISS rate?

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1 A I don't know if they have in the last five years. I know  
2 they have not in the last year.

3 Q Okay. Did you appear and testify in front of a committee  
4 of the legislature and tell the committee that they should not  
5 grant any increase to KTSS because it would be a waste of their  
6 money?

7 A No, I did not say that at the, I testified, but I did not  
8 say that.

9 Q Did you say anything to that effect, that there should be  
10 no increases given to KTSS?

11 A I did not say there should be no increases given to KTSS.  
12 I believe I testified that there should not be any increases  
13 until there were protections put around where that fund, that  
14 where that funding goes to in terms of making sure it goes to  
15 the people doing the direct care work in the homes.

16 Q And did you limit that to KTSS or did you talk about the  
17 industry in general?

18 A I talked about the industry in general with KTSS as an  
19 example.

20 Q What is the management-staff ratio at KTSS?

21 A I don't recall that off the top of my head.

22 Q How long have you, you were involved prior to your life  
23 with the ASCME Union, with United Autoworkers?

24 A Yes, I was.

25 Q And in what location?

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BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,  
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party.

Cases: 19-CA-74715  
19-CA-79006  
19-CA-82869  
19-CA-86006  
19-CA-88935  
19-CA-88938  
19-CA-90108  
19-CA-96118  
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before, **Administrative Law Judge, Jay Pollack** at the National Labor Relations Board, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174 on Friday, September 13, 2013 at 9:02 a.m.

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A P P E A R A N C E S1  
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6 NATIONAL LABOR RELATIONS BOARD - REGION 19

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23 **On Behalf of the Petitioner:**  
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(913) 422-5198

- 1 A Yes.
- 2 Q October 16?
- 3 A Yes.
- 4 Q November 26<sup>th</sup>?
- 5 A Yes.
- 6 Q March 11<sup>th</sup>?
- 7 A Yes.
- 8 Q Now, let's, let's go back. The ones we talked about, July
- 9 through October, were in 2012?
- 10 A Right.
- 11 Q The March 11<sup>th</sup> was 2013?
- 12 A Yes.
- 13 Q March 12<sup>th</sup>?
- 14 A Yes.
- 15 Q April 4<sup>th</sup>?
- 16 A Yes.
- 17 Q And April 5<sup>th</sup>?
- 18 A Yes.
- 19 Q And there have been mediation sessions held at the Federal
- 20 Mediator on May 13<sup>th</sup>?
- 21 A I don't recall that date, but it was in May, yes.
- 22 Q All right. So there was one in May?
- 23 A Yes.
- 24 Q And August 6<sup>th</sup>?
- 25 A Yes.

1 evidence)

2 MR. LOFLAND: But for that limited purpose?

3 JUDGE POLLACK: Yes.

4 JUDGE POLLACK: I'm not, I'm not considering these unfair  
5 labor practices as part of my case.

6 MR. FIOL: No, no. And I -- I cannot bring it into  
7 evidence, so I was just --

8 JUDGE POLLACK: Right.

9 MR. FIOL: I -- and, in addition to that, I have no  
10 further questions of the witness, so --

11 JUDGE POLLACK: Okay. Mr. Jensen, do you have any  
12 redirect?

13 MR. JENSEN: Yes, I do.

14 **REDIRECT EXAMINATION**

15 Q BY MR. JENSEN: Ms. Clifthorn, when you were testifying,  
16 there was questions about -- put to you about direct service  
17 work. Do you remember that?

18 A Yes.

19 Q What is direct service work?

20 A Well, the State defines direct service work as sort of the  
21 care for the clients -- the actual care -- anything that sort  
22 of involves the care of the clients that are in KTSS's care.

23 Q Do you have in front of you Employer's Exhibits 3 and 4?

24 A Employer's 3 and 4?

25 Q Yes.

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1 A Yes.

2 Q Okay. Let's look at Employer's 3 for the moment that's  
3 right there.

4 A Okay.

5 Q This is the one that Mr. Lofland explains that we have to  
6 go from back to forward so -- I guess I'm wondering, on the  
7 bottom of page 1, an email coming from you to Mr. Lofland on  
8 Thursday, August 15<sup>th</sup>, 12:14 p.m. Do you see that one?

9 A Yes.

10 Q Okay. Now, let's turn the page. It says that you  
11 hopefully gathered from my email response -- what are you  
12 talking about there?

13 A Well, there's a missing email here where my email program  
14 responded to him on August 9<sup>th</sup> saying that I was out of town  
15 until August 19<sup>th</sup>.

16 Q Okay. Then I want to ask you a thing or two about  
17 Employer's Exhibit 4. At the top, it says Monday, September 9,  
18 11:14 a.m. from Mr. Lofland to, I guess the mediator and to  
19 you, and it says it's been more than a month since this email,  
20 and there's been response.

21 And I presume that this email refers to the one down  
22 below. Is that accurate that you had not responded since that  
23 -- since that -- this August 9 email?

24 A No.

25 Q What had you done?

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1 I'll withdraw that question.

2 Q BY MR. JENSEN: Ms. Clifthorn, you said that you preferred  
3 -- you would prefer the Union, as the head of negotiations, to  
4 meet KTSS now without the mediator. Why is that?

5 A I think there's a number of issues --

6 MR. LOFLAND: Objection. I don't think it's relevant or  
7 material why they prefer not to meet with a mediator.

8 MR. JENSEN: Well, we won't know until we hear her answer,  
9 will we?

10 JUDGE POLLACK: I'll -- I'll let her explain, go ahead.

11 A So, there's a number outstanding issues where I feel like  
12 we have not had sufficient conversation about them, and there's  
13 new proposals and new issues and I think that it helps to be at  
14 the bargaining table talking to each other.

15 Q Can people outside of the bargaining unit itself be paid  
16 with ISS dollars?

17 What is -- what's an ISS dollar?

18 A The Instructional Service Support. Those are the -- the  
19 funds that the State pays for, care for the clients, as opposed  
20 to administrative uses.

21 And to answer your first question, yes. Non-bargaining  
22 unit members can be paid with ISS dollars. The employers have  
23 a choice about how they spend that fund, and on whom.

24 Q Mr. Lofland asked you some questions yesterday about  
25 testifying in front of the State Legislature. Do you remember

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1 that?

2 A Yes.

3 Q Okay. Now, what are -- what's the -- I hear the term  
4 benchmark, benchmark rate. Is that a term you -- you are  
5 familiar with?

6 A Yes.

7 Q What is that?

8 A So, the benchmark rate is the rate set by the State, an  
9 hourly rate, to care for the clients, but -- so depending on  
10 how many hours the client is eligible for, the companies caring  
11 for them are paid an hourly rate to then figure out how to care  
12 for those clients.

13 Q So -- so the State determines, from each client --

14 A No, for each area, determines a benchmark rate and then  
15 determines how many hours a client is eligible for. And then  
16 that's what's paid to the company.

17 Q And does the Union support increases in that benchmark  
18 rate?

19 A Yes. We absolutely support increases in the benchmark  
20 rate, as long as there's more protections for -- in how that  
21 money is spent. Because our concern right now is that these  
22 are taxpayer dollars that are not -- DSHS policy doesn't  
23 prescribe how -- enough, in our opinion, how that money can be  
24 spent. So we think the policy needs to change.

25 Q Nothing further of the witness.

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BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,  
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party.

Cases: 19-CA-74715  
19-CA-79006  
19-CA-82869  
19-CA-86006  
19-CA-88935  
19-CA-88938  
19-CA-90108  
19-CA-96118  
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before **JAY R. POLLACK, Administrative Law Judge**, at the National Labor Relations Board - Region 19, Jackson Federal Building, at 915 Second Avenue, in Seattle, Washington, on Tuesday, September 17th, 2013, at 9:05 a.m.

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A P P E A R A N C E S**On Behalf of the Counsel for General Counsel:****RICHARD FIOL, ESQ.****ELIZABETH DeVLEMING, ESQ.**

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1 Q Are you familiar with a term, in fact it is really a duty,  
2 called "a narrative?"

3 A Oh, yes.

4 Q Ok. Can you please tell us what a narrative is?

5 A A narrative -- every client has goals. It may be losing  
6 weight because weight and health is an issue. It may be  
7 integration into the community, getting them more involved. It  
8 could be just about anything. A narrative is the staff's  
9 description in writing of what they did that particular day or  
10 week to try and meet the goals that had been set for the  
11 clients.

12 Q Did you ever have a problem with management as to the way  
13 you did your narratives?

14 A Not usually because I was a newspaper reporter in my  
15 previous life, and writing comes naturally. There was one  
16 occasion early in my employment where I was called into the  
17 office for criticism of my narrative.

18 Q Can you tell us about that situation and that --

19 A A member of management had come to the residence to do a  
20 house inspection, done generally monthly at that time, and had  
21 written that there was a box of video movie tapes stored in the  
22 living room that should have been in the client's room. I was  
23 feeling a little snotty that day, and I wrote in my narrative  
24 that management surely had better things to do than criticize a  
25 box of videotapes, that they should have been happy that the

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1 videotapes weren't spread all over the floor.

2 I was called in and told the narratives weren't the  
3 appropriate forum for me to express my opinion.

4 Q Who called you in?

5 A I believe it was Carolyn Russell.

6 Q Do you know what her position was?

7 A It may have been Program Manager. I am not -- I am not  
8 sure of the position that Mr. Frey has at the moment.

9 Q What happened to you? Did you receive a discipline for  
10 that?

11 A I -- I volunteered to rewrite the narrative and did so.  
12 There was never any discipline.

13 Q You mentioned that in describing about your ability to do  
14 narratives, you were a newspaper reporter?

15 A Correct.

16 Q How long were you a newspaper reporter?

17 A Forty years.

18 Q Can you tell the Court your background as a newspaper  
19 reporter?

20 A I served as an editor some of those years, but not many;  
21 mostly reporter. *Norfolk Ledger Star*, *Delaware County Daily*  
22 *Times* in Chester, Pennsylvania, *Philadelphia Inquirer*, *The*  
23 *Columbian* in Vancouver, Washington. I finished up with 25  
24 years at the *Seattle Post Intelligencer*.

25 Q Did you retire out of the newspaper business --

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1 A I did.

2 Q I'm sorry, you did?

3 A I did.

4 Q Did you receive any discipline for that incident?

5 A None whatsoever.

6 Q I want to move forward to the year 2011. Are you aware of  
7 a union organizing campaign that was taking place at KTSS?

8 A Yes, I was active in it.

9 Q Okay, what was your -- what was your role in it?

10 A I was a member of the union organizing committee.

11 Q What is that?

12 A It was the group that varied in number anywhere from eight  
13 to a dozen people who were interested in dealing with low pay  
14 and fringe benefits through -- and other problems through  
15 organizing a union.

16 Q Are you familiar with a term called a "Blitz?"

17 A I am indeed aware of the Blitz.

18 Q Can you tell us what that is?

19 A The Blitz occurred -- meetings began in June or July. I  
20 joined the effort in August, and between August and December,  
21 we went through training and planning and preparations for a  
22 union sign-up, which was called the "Blitz." It occurred in  
23 the first week -- weekend of December of 2011.

24 Q Okay, and did you participate in this Blitz?

25 A I did. I signed up fourteen people.

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1 Q Okay. And what was the period of time -- what was the  
2 duration of the Blitz --

3 A It began on Friday on -- at 4:35 p.m., five minutes after  
4 the Company would normally lock up the doors and go home for  
5 the weekend. It continued until Sunday evening.

6 Q Okay. So, upon your return, did you return to work on  
7 that Monday?

8 A I did, and by that time, we had signed up more than fifty  
9 percent of the workers.

10 Q Okay.

11 MR. LOFLAND: Objection; not responsive to the question  
12 and move to strike.

13 JUDGE POLLACK: It is pretty -- go ahead.

14 Q BY MR. FIOL: So, did you hear -- find out that there was  
15 going to be a meeting -- that management was going to propose a  
16 meeting -- a mandatory meeting for all employees?

17 A Not on Monday. Monday was strangely quiet. I was unaware  
18 of anything happening.

19 Q Okay. How about the next day, on Tuesday?

20 A On Tuesday, I saw a notice -- I believe it was a written  
21 notice that there were going to be a series of meetings and  
22 that we needed to choose which ones we were going to attend,  
23 and did so.

24 Q So, did there come a time when you attended one of these  
25 mandatory meetings?

1 A It was either Wednesday or Thursday. I think it was  
2 Wednesday, but you know, it could have been Thursday.

3 Q How about if I ask you this: Do you recall who you saw  
4 there?

5 A Yes.

6 Q Who did you see?

7 A Of the union activists who were there in attendance at the  
8 same time, Sharon Sale, Johnnie Driskell, and Bonnie Minor.

9 Q Okay. Besides these union activists, as you called them,  
10 were there other employees there?

11 A Yeah, probably 25 to 30.

12 Q How about members of the management team? Any of them  
13 present?

14 A My recollection is that maybe Kathy Grice of management  
15 was there, just to say a word or two of introduction, and then  
16 she left.

17 Q And then after the introduction, what happened next?

18 A There was an anti-union consultant from Tukwila who put  
19 on a presentation.

20 Q And do you recall the amount of time that this  
21 presentation took?

22 A About an hour and a half, something like that.

23 Q Okay. Do you recall that there was a time during that  
24 hour and a half during which there was a question and answer  
25 session?

1 A There was.

2 Q Can you tell us about that?

3 A I can. Two notable things happened from my perspective,  
4 from the union perspective.

5 One, I identified myself as a union activist.

6 Q So, to who did you identify yourself to --

7 A The anti-union consultant.

8 Q What did you say?

9 A He was making a presentation on union dues, and said that  
10 he wasn't certain what the amount of the union dues were, but  
11 that they were between one and three percent. If my  
12 recollection is correct, they were one and a half percent, and  
13 I raised my hand.

14 Q What did you say?

15 A And I said, "I can help you with that. The dues are," and  
16 I think it is one and a half percent.

17 And he said, "How would you know this?"

18 I said, "I am a member of the union organizing committee."

19 Q Did anyone else speak up at that meeting?

20 A The Union had given, and I don't know how it was  
21 distributed or who got it, but I saw a copy -- a list of  
22 proposed questions that we could ask the union consultant at  
23 the meeting. I didn't ask any of them, and to the best of my  
24 knowledge, only one was asked, and that was by Bonnie Minor.

25 Q What do you recall her asking?

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1 A She asked the union consultant how much the Company was  
2 paying him an hour.

3 Q And by -- did you mean to say "anti-union?"

4 A Anti-union.

5 Q So what was that -- what did she say? I'm sorry, I  
6 thought I cut you off.

7 A No. She asked him how much he was getting paid an hour.  
8 He never said -- never responded with that information.

9 Q Did he say --

10 A Said something to the effect that it wasn't relevant and  
11 moved on.

12 Q After she asked that question, did anybody else ask  
13 questions?

14 A No, there were some anti-union statements made by a couple  
15 of the ladies who work in the Home Care Division where we  
16 weren't organizing, but it was -- I expected heated discussion  
17 and it was strangely quiet.

18 Q So, how much time after that Bonnie Minor's questions do  
19 you recall the meeting ending?

20 A Within minutes.

21 Q What did you do after that?

22 A It was the end of my work shift. There was a previously  
23 scheduled union meeting at the Fairfield Inn, and I drove over  
24 to the Fairfield Inn to attend the meeting.

25 Q What happened, just briefly --

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1 A Before we could begin --

2 Q Tell us what happened next.

3 A Before we could begin conducting business, and it was only  
4 about thirty minutes after the end of the Company's meeting,  
5 Bonnie Minor's cellphone rang, and she went out in the hall to  
6 take the call, and she came back in a minute or two later, and  
7 she was weeping, and she said, "I have been" --

8 MR. LOFLAND: Objection, hearsay.

9 MR. FIOL: He didn't say anything yet. Well, anticipation

10 MR. LOFLAND: But it is leading to a hearsay answer.

11 MR. JENSEN: It is corroborative

12 MR. FIOL: Well, let me ask a follow-up question after  
13 that, and then let the Judge decide.

14 Q BY MR. FIOL: Mr. Hopkins, the objection was in  
15 anticipation of something that is going to be said, so just say  
16 it and then we will deal with --

17 MR. LOFLAND: No, no, no.

18 MR. FIOL: I am --

19 JUDGE POLLACK: I am ruling in your favor.

20 I am taking back the question, so I am moving on.

21 JUDGE POLLACK: Okay.

22 Q BY MR. FIOL: After that day --

23 A Look --

24 Q There is no question. There is no question.

25 A Okay.

1 Q After that day, did you stay active in this campaign?

2 A Very much so.

3 Q Okay, and how much longer after this campaign did you end  
4 your tenure with KTSS?

5 A In April of 2012.

6 Q Okay, and was there any reason that you did that?

7 A When I had my heart surgery, I had six bypasses, and a  
8 patch job of the aorta, and I didn't want to go through that  
9 again. Following the going public with the union campaign,  
10 working conditions became difficult, if not oppressive.

11 Q Can you give us an example of something that happened to  
12 you?

13 A Inspections that used to be monthly, and at some points  
14 had been every two or three months, became more frequent and it  
15 appeared as -- well, --

16 Q No, just --

17 A Yeah. The inspector which had formerly just been a co-  
18 worker was now done by a member of the management team and --

19 Q And who was a member of the management team --

20 A Stacy and Kim. I can't recall their last names.

21 Q Kimberly Krusi, does that sound familiar?

22 A Yes.

23 Q Stacy Durnall; does that --

24 A Yes.

25 Q -- name sound familiar?

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1 A Yes.

2 Q Okay.

3 A The inspections which formerly just included things like  
4 the smoke detectors, they would go through the kitchen cabinet  
5 and pull out every can and inspect every expiration date.

6 There was that kind of pressure put on.

7 Q Okay.

8 A I went to work one day and an inspection at another of my  
9 client's residence, they wrote up that he had some Tums without  
10 a prescription.

11 I knew the pressure was on and I had expected it, but I  
12 was carrying a load of boxes up a steep stairwell to a female  
13 client's residence so she could move, and I had an angina  
14 attack, and my thought was, "If I say here, I am going to die  
15 or I am going to get fired. I am going to take Door No. 3."

16 Q All right.

17 A So I went in the next day and I retired.

18 MR. FIOL: Thank you for your statement, Mr. Hopkins. I  
19 have no further questions.

20 Thank you for your time.

21 **DIRECT EXAMINATION**

22 Q BY MR. JENSEN: Good morning, Mr. Hopkins.

23 A Good morning.

24 Q My name is Terry Jensen. I am the Union attorney.

25 I have just a few follow-up questions on what the General

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- 1 Counsel was asking.
- 2 A Okay.
- 3 Q You said you became the Head of Household at the Pine
- 4 Ridge about 2007; is that correct?
- 5 A I am not sure of the date, but about that.
- 6 Q And I think you said for three years.
- 7 A Approximately.
- 8 Q And what happened after three years? You were no longer
- 9 Head of Household?
- 10 A I left. I -- that was my first retirement. I was burned
- 11 out. It is not an easy job.
- 12 Q You talked about a time when the client called you and
- 13 said some stuff had been stolen --
- 14 A Correct.
- 15 Q And were you off-shift, at that time?
- 16 A I was.
- 17 Q Okay, but you talked to him anyway?
- 18 A Of course.
- 19 Q Okay, and you went out to his living facility?
- 20 A Correct.
- 21 Q And how long did you spend there?
- 22 A Probably an hour or an hour and a half.
- 23 Q What did you do there?
- 24 A Acted as a mediator between he and his friend.
- 25 Q Was his friend there, as well?

- 1 A No, on the phone.
- 2 Q So you were kind of counseling them?
- 3 A Yes.
- 4 Q Okay. And were you aware of a rule at the time that you
- 5 weren't supposed to contact clients or go to their homes when
- 6 you were off-shift?
- 7 A I never heard that one.
- 8 Q Okay. You said you discussed this shortly thereafter with
- 9 Mieke in the office, correct?
- 10 A Correct.
- 11 Q Okay, and Mieke brought that subject up, right?
- 12 A Correct.
- 13 Q Did you tell her then, or did you put it in your report,
- 14 that you had talked to this person on -- when you were off-
- 15 shift, and then you went to his home when you were off-shift?
- 16 A Oh, I certainly put it in my report.
- 17 Q Were you ever disciplined or upgraded for that for having
- 18 gone to his house or talked to him?
- 19 A No.
- 20 Q You referred to in that conversation when General Counsel
- 21 was asking you questions, DEE --
- 22 A DDD.
- 23 Q DDD, and that is?
- 24 A Division of Developmental Disabilities.
- 25 Q A division of the State of Washington?

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1 A Correct.

2 Q You were also asked about a mandatory meeting that the  
3 Employer held that you attended. Do you remember that?

4 A Correct.

5 Q Okay, and you mentioned the name -- I think you said  
6 Sharon Sale; is that correct?

7 A Yes, it is.

8 Q Do you know an Alicia Sale?

9 A That is her daughter.

10 Q Who is the daughter and who is the mother?

11 A Alicia is the daughter.

12 Q Of --

13 A Sharon Sale.

14 Q On that mandatory meeting, were you on paid time?

15 A Yes.

16 Q You said Bonnie Minor asked a question about the pay that  
17 this consultant was getting.

18 A Yes.

19 Q What was the tenor of her remark?

20 JUDGE POLLACK: Just the question.

21 THE WITNESS: I mean, I don't know there is any way to ask  
22 that question without it being rude, so I guess the tenor was  
23 clearly -- I -- I -- I believe that clearly identified her as a  
24 union activist, as my coming right out and say.

25 Q BY MR. JENSEN: I want to turn now briefly to the

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1 inspections you talked about. You said they had formerly been  
2 monthly to every two to three months; correct?

3 A Yes.

4 Q And you say formerly, being before the advent of the union  
5 campaign?

6 A Yes.

7 Q You said co-workers had been doing those inspections,  
8 right?

9 A Correct, the Tenant Services Counselor. It was the matter  
10 of they would say, "Who would be willing to take on the onerous  
11 task?"

12 Q When you say the "onerous," why was it onerous?

13 A If you have to go to the homes of 150 clients and they are  
14 not there, they are previously -- they are unannounced visits,  
15 and then you have to go back again and again and again and it  
16 is just a real nuisance.

17 Q When you say you have to go back again and again and  
18 again, you mean --

19 A To find them home.

20 Q Uh-huh. And you said formerly they had just inspected  
21 fire alarms; is that what you said? I am not sure I heard you  
22 before --

23 A That was -- there was a checklist.

24 Q Uh-huh.

25 A You have to go through it. But substantially, they check

1 all of the fire alarms, they check the water temperature at the  
2 faucet in the kitchen, they check to make sure there is  
3 adequate food in the residence, that there is a first aid kit  
4 present; there is a checklist. It is not detailed to the point  
5 that it became after the union campaign went public.

6 Q And it was after the union campaign when they started  
7 checking dates on --

8 A They didn't start checking dates on cans -- they would  
9 make a house check at 2:00 in the morning. They made a house  
10 check at Pine Ridge Apartments two weeks before they came out  
11 and checked every can in the cabinet.

12 Q What would be the significance of checking at 2:00 a.m. in  
13 the morning versus the middle of the afternoon when you --

14 A Trying to catch the night shift asleep.

15 MR. JENSEN: I have nothing -- oh, one further question.

16 Q BY MR. JENSEN: You mentioned that somebody under the  
17 procedure, the new process, they made note that somebody had  
18 Tums, somebody had some Tums; is that right?

19 A Yes. Without a prescription.

20 Q Yeah.

21 A Well, a lot of them have Tums, but they have to have a  
22 prescription for the Tums.

23 Q Who requires a prescription?

24 A You know, I don't know whether that is the State policy or  
25 a company policy, but -- and I didn't even know the Tums were

1 there. Apparently his mother bought them for him.

2 Q And did that inspection and wrote that up, if you know?

3 A I believe it was Kim.

4 Q Kim Krusi?

5 A Yes. I got -- I wasn't present when she arrived. I was  
6 informed by a co-worker.

7 MR. JENSEN: Nothing further.

8 MR. LOFLAND: Is there any affidavit for this witness?

9 **CROSS EXAMINATION**

10 Q BY MR. LOFLAND: Mr. Hopkins, at the meeting you testified  
11 about in which there was a consultant, I believe you said from  
12 Tukwila?

13 A Yes.

14 Q The only statement or comment you made was to identify the  
15 amount of the union dues?

16 A Yes.

17 MR. FIOL: Objection. I believe that misstates the  
18 record. Strike --

19 THE WITNESS: I might --

20 JUDGE POLLACK: There is a question --

21 Please wait.

22 MR. JENSEN: Can we instruct the witness to wait until  
23 there is a question and not volunteer answers?

24 JUDGE POLLACK: Please wait until there is a question and  
25 then you can answer, and I will ask him to wait until you are

1 finished with your answer --

2 THE WITNESS: Yes, sir.

3 JUDGE POLLACK: -- before he asks another question.

4 Okay, go ahead.

5 Q BY MR. LOFLAND: Mr. Hopkins, the only statement that you  
6 made in that meeting, directed toward the facilitator of the  
7 meeting, was to clarify what the amount or percentage of union  
8 dues was; is that correct?

9 A It is correct, except for the fact that I also identified  
10 myself as a member of the organizing committee.

11 Q All right, and that was to be my next question.

12 A Yeah.

13 Q Did you specifically tell him that you were a member of  
14 the union organizing committee?

15 A I specifically told him.

16 Q There has been testifying -- testimony by other witnesses  
17 about a flyer that was circulated that had pictures of  
18 employees of KTSS who supported the Union. Are you aware of  
19 such a flyer?

20 A I am.

21 Q Was your picture on such a flyer?

22 A It was.

23 Q During the course of your employment at KTSS, did you make  
24 -- did you make it a secret that you were a union supporter?

25 A I certainly did until the Blitz.

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1 Q Following the Blitz, did you make it a secret that you  
2 were a union supporter?

3 A Absolutely not.

4 Q Did you tell Mr. Frey that you were a supporter of the  
5 Union?

6 A I don't believe so.

7 Q Did you tell Mr. Closser that you a supporter of the  
8 Union?

9 A I don't believe so.

10 Q Did you tell anyone else in management that you were a  
11 supporter of the Union?

12 A I don't believe so.

13 Q During the time that you were employed at KTSS, after the  
14 Union became active, which was after the time of the Blitz,  
15 which I believe the testimony was that it was the first week in  
16 December of 2011?

17 A Correct.

18 Q Is that correct?

19 A Yes.

20 Q And from that time until the time you left, were you given  
21 any disciplinary warnings at all?

22 A No.

23 Q Now, during that period of time in December until, I  
24 believe you testified you resigned in April of 2012; am I  
25 correct on that date?

1 A If she said more, I don't recall it.

2 Q You don't recall her identifying herself as a union  
3 supporter and organizer as you did? By that, I mean, doing so  
4 directly.

5 A I don't recall that.

6 MR. LOFLAND: Thank you. Nothing further.

7 JUDGE POLLACK: Okay.

8 MR. FIOL: Just a few questions.

9 **REDIRECT EXAMINATION**

10 Q BY MR. FIOL: Mr. Hopkins, you were asked a question about  
11 a flyer or a picture. Do you recall that question?

12 A Yes.

13 Q Were there other pictures on that flyer?

14 A There were. There were probably eight or ten of us on it.

15 Q Who were the people that were on that flyer?

16 A Oh, boy.

17 Q Were they part of the committee --

18 A They were part of the organizing -- the union organizing  
19 committee.

20 Q As best as you can recall --

21 A Not all members, but they were members of it.

22 Q Who do you recall pictures was on that --

23 A Johnnie Driskell, Terry Owens, Bonnie Minor, me, Lenora --

24 Lenora Jones, I think Ally -- Alicia Sale was there, maybe

25 Amanda was on there --

1 Q And what timeframe -- when did this come out? What  
2 timeframe are we looking at?

3 A You know, I can't give you a date. It was after the  
4 meeting with the anti-union consultant, at some point after  
5 that.

6 Q Was it still in the month of December?

7 A But it was very early in the campaign. It was one of the  
8 first things we put out, so it would have been in -- my best  
9 guess would be early December.

10 Q You were asked if you were after that period of time, if  
11 you were disciplined. Do you recall that question?

12 A Correct.

13 Q Now, you testified that you were a member of the -- that  
14 you were a newspaperman.

15 A Yes.

16 Q Are you still -- do you have contact with people in the  
17 newspaper people here in Seattle?

18 A Newspaper, TV, and radio.

19 Q To your knowledge, have you spoken to people in management  
20 about your contact with the media?

21 MR. LOFLAND: I am not sure about the relevancy as to the  
22 question to the --

23 MR. FIOL: I think it might be relevant. Well, you may  
24 not discipline someone if they have access to the media. I  
25 mean, I am just asking. It is just a question --

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1   Whereupon,

2                               MICHAEL ALLAN COMTE,

3   having been sworn, was called as a witness herein, and was  
4   examined and testified, as follows:

5           JUDGE POLLACK: Please be seated.

6           Please give us your name and address for the record.

7           THE WITNESS: My name is Michael Allan, A-l-l-a-n, Comte,  
8   C-o-m-t-e, and my residential address is 505 Broadway, No. 900,  
9   Tacoma 98402.

10          JUDGE POLLACK: Thank you.

11                               DIRECT EXAMINATION

12   Q    BY MR. LOFLAND: Okay, Mr. Comte, what is your business  
13   address?

14   A    My business address is 711 Court A, Suite 103, Tacoma  
15   98402.

16   Q    And what is the nature of your business?

17   A    I am a psychotherapist in private practice, specializing  
18   in primarily forensic work, evaluations, a little psychosexual  
19   and psychosocial evaluations.

20   Q    How long have you done that?

21   A    Well, I began those tasks in 1979 when I was a Therapy  
22   Supervisor and Assistant Director of the Sex Offender Treatment  
23   Program at Western State Hospital in Lakewood, Washington, and  
24   then in 1982, I went into full-time private practice with those  
25   specialties, both assessing and treating accused and convicted

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1 and adjudicated adolescents, adults, who were charged with  
2 sexual crimes.

3 Q Would you tell us, please, your educational background?

4 A Yes, I have a bachelor's degree in Sociology that was  
5 conferred from the University of Portland in Portland, Oregon  
6 in 1966, and a master's degree in Social Work conferred from  
7 Portland State University in 1970.

8 Q Tell me your professional experience.

9 A When I got out of undergraduate school in 1966, I accepted  
10 a position as a -- what was then known as a Parole and  
11 Probation Officer for the State of Washington. And, after two  
12 years in that position, I was awarded a stipend to attend  
13 graduate school, and I went to graduate school full-time on  
14 taxpayers' dollars, which is very nice. After I received my  
15 master's degree in social work, I came back to the Department  
16 and started -- developed the first work-in-training in release  
17 program that had been operated by the State of Washington, and  
18 supervised that for a couple of years, and then transferred to  
19 the Central Office in Olympia where I assisted in the  
20 development of the other work-in-training in release facilities  
21 in Washington state.

22 I was anxious to get back to Oregon where I am from, so  
23 when a position was advertised as an Administrator and  
24 Supervisor for the Marion County Juvenile Court in Salem,  
25 Oregon, I accepted it, and it wasn't long before I realized I

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1 had made a mistake and Puget Sound was really home, so it took  
2 me two years to get back, and I was offered a position as a  
3 Therapy Supervisor at Western State Hospital and I accepted  
4 that, and as I said, I was promoted a year later, and then  
5 continued until I went into full-time private practice, which I  
6 have been doing since.

7 Q Are you familiar with the programs and services of the  
8 Washington Department of Social and Health Services Division of  
9 Developmental Disabilities?

10 A Yes. Actually, the Division of Developmental Disabilities  
11 recently changed their name to -- I always have a problem with  
12 this, but Developmental Disabilities Administration, and yes, I  
13 have been providing services for them since 1982.

14 Q Tell me the types of services you have provided.

15 A Well, the very first client I got was a -- a man who was  
16 very close to mute. He could say a few words, and what he had  
17 been doing was enticing women away from the group home into a  
18 secluded area, tying them to a tree, and sexually assaulting  
19 them, and the State's response to that was to move this man  
20 from one facility to another where he repeated that behavior,  
21 until an organization by the name of The Sexual Assault Center  
22 filed suit against the State, and I was asked to assess this  
23 client, develop a treatment plan for him, which I did, and that  
24 was my first client, and that began a -- a sub-focus, if you  
25 will, of assessing and treating developmentally disabled

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1 persons who had criminal issues. Most were not competent to  
2 stand trial, and it was my goal to develop a treatment plan and  
3 to speak to the risk, the level of risk they pose to the safety  
4 of the community, and what steps should be taken to mitigate  
5 that risk.

6 Q Are you familiar with the programs and providers of  
7 services to the developmentally disabled like Kitsap Tenant  
8 Support Services?

9 A Yes, I am.

10 Q And have you, in the past, worked for or with Kitsap  
11 Tenant Support Services?

12 A I have worked with them dozens of times.

13 Q And in the same manner that you spoke of, of doing  
14 evaluations of developmentally disabled?

15 A Correct. The referral actually comes from the  
16 Developmentally Disabilities Administration, which used to be  
17 known as the Division of Developmental Disabilities. I conduct  
18 the assessment. If I concluded that the individual was at high  
19 risk for re-offense and needed to have constant monitoring,  
20 then there is an internal decision-making body within DDA,  
21 Disabilities Administration, that determines what the housing  
22 supervision will look like, and provides the funding to make  
23 that happen.

24 Q Now, you are familiar with the type of program and  
25 services that Kitsap Tenant Support Services offers.

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1 A Correct.

2 Q Can you tell me a little bit about the history, how these  
3 types of services began, when and why?

4 A Yes. I think I should drop back a little bit and talk  
5 about the population themselves of who we are dealing with  
6 here.

7 Q All right, well --

8 A Would that be of any value?

9 Q It might be easier to tell me who is served by these  
10 organizations.

11 A In the state of Washington, the cut-off point is an IQ of  
12 below 70. If you have a full-scale IQ of 70, you are  
13 considered in the borderline range of intellectual functioning.

14 So, all of the clientele that are served by the Division  
15 are below -- are 69 or below. The reasons for the  
16 developmental disabilities might be genetic, it might be a  
17 chromosome defect; there is a significant populations that have  
18 the limitations that they have because of fetal alcohol  
19 syndrome, fetal alcohol exposure in utero. We are seeing an  
20 increasing number, actual ten-fold, in the last ten years of  
21 persons with autism, and they are becoming a larger and larger  
22 percentage of the people we serve. And, again, I am getting  
23 involved because they are acting out criminally, and as I said,  
24 half the time they satisfy the legal competency standard, and  
25 half the time they do not.

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1 Q Tell us a little more about fetal alcohol syndrome and how  
2 it manifests itself in a person.

3 A Well, there are some dysmorphic physical features such as  
4 the absence of a philtrum -- that little canal that we all have  
5 at the bottom of our noses. There is wide-set eyes. There is  
6 usually a small cranium, so at least for the first four or five  
7 years of life, they look pretty distinctive. A trained  
8 clinician can assess, based on those physical anomalies.

9 As the individual grows older, those physical  
10 characteristics disappear, but by then, hopefully, you have had  
11 testing conducted, especially through a hospital setting by a  
12 fetal alcohol specialist. We are fortunate in the state of  
13 Washington, and specifically in Seattle, to have Harborview  
14 Hospital with Dr. Clarion Sterling who is an international  
15 expert on fetal alcohol syndrome. If you can get your client  
16 into that -- into their fetal alcohol clinic, you are going to  
17 get an excellent and thorough work-up, and you are going to  
18 know what you are dealing with. It could be fetal alcohol  
19 syndrome, or it could be fetal alcohol effect; in other words,  
20 the mother's ingestion of alcohol has affected the development  
21 of the frontal lobes in the brain that have everything to do  
22 with judgment, decision-making, impulsivity, the capacity to  
23 connect cause and effect, the capacity to experience guilt,  
24 remorse, and empathy for others. So, most have those  
25 limitations.

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1 Q So, as a person matures, he becomes chronologically adult.

2 A Yes.

3 Q In the years. The problems that you spoke about, the  
4 problems with lack of judgment, lack of being able to filter  
5 right and wrong, and things of that nature, are they going to  
6 manifest themselves in that person's behavior?

7 A Oh, yes. Yes, it is going to get magnified the older they  
8 get, because they have more opportunity to access the community  
9 without supervision.

10 Q Now, you had mentioned that also people often -- you have  
11 seen more and more people with autism.

12 A Yes.

13 Q Could you explain to us what autism is and what are the  
14 problems that are associated with that?

15 A Autism is a neurological condition that we really don't  
16 understand what causes that condition. There are various  
17 theories, and a lot of them have been dismissed. There was a  
18 belief for a long time that it was a result of inoculations,  
19 that somehow, some clients were susceptible to that in an  
20 altered brain chemistry and created this -- these autistic  
21 behaviors. We -- that has been dismissed; that theory has been  
22 dismissed.

23 So we really don't know what causes it, but what we do  
24 know is that these folks are -- are on a continuum from very  
25 severe, non-verbal, very vegetative individuals who have great

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1 difficulty interacting on any level, all the way down to the  
2 other end of the continuum, which is a group that we used to  
3 refer to as Asperger's Disorder. That -- that particular  
4 diagnosis has been eliminated in the Diagnostic and Statistical  
5 Manual 5, which just came out, and which we are going to be  
6 living with for probably fifteen or twenty years. And they  
7 have now lumped them all together.

8       The person with Asperger's has extreme deficits in their  
9 social skills. They can't gauge the impact of what they say  
10 and do on other people, nor can they accurately decipher what  
11 the person's non-verbals are communicating back to them. They  
12 are very literal, they are very concrete, but there are other  
13 areas of the brain that are developed, and perhaps even over-  
14 developed.

15       You show me a world famous scientist that has contributed  
16 enormously to his or her field, and the probabilities are that  
17 that person has Asperger's Disorder. Again, they don't do well  
18 socially, they have a lot of conflicts with people, they don't  
19 understand social rules, and those that they do understand,  
20 they often break. But they are brilliant in their field, in  
21 their very narrow field. They are a real pleasure to work  
22 with. But they have other problems, behavior problems, very  
23 similar to the lowest functioning persons with autism.

24 Q     So these are the type of people who are referred to  
25 programs like KTSS?

1 A Correct.

2 Q So they are people that are going to have both an IQ of 69  
3 or below --

4 A Correct.

5 Q Plus the other -- other problems like fetal alcohol  
6 syndrome, autism --

7 A Yes.

8 Q And are these people also referred to, on top of these  
9 conditions, also have other emotional and mental health issues?

10 A Yes. You know, growing up in our culture, where there is  
11 a lot of emphasis on academic achievement, excelling, makes it  
12 very difficult for someone with a developmental disability.  
13 They are targeted in grade school, they are harassed, teased,  
14 rejected, which affects their personality development and how  
15 they feel about themselves. It is really very tragic, and it  
16 doesn't seem to be changing despite the emphasis in the public  
17 school systems on bullying. It is a sad state of affairs, but  
18 they begin acting out. Their depression, anger, and when they  
19 do, they come to the attention of law enforcement, and that is  
20 one significant step on the way to being classified as in need  
21 of assisted living; someone to look out for them 24/7.

22 Q Is there anything else that we need to know about the type  
23 of people who are in these programs, other than what you have  
24 told us?

25 A Well, you -- you also have a percentage of clients that

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1 are not only developmentally disabled, but also have a mental  
2 illness overlay, so you have a person with an IQ of 52 who also  
3 has a diagnosis -- an apparent diagnosis of paranoid  
4 schizophrenia; especially difficult to work with, especially  
5 difficult to house.

6 Q So aside from the things that you have talked about, there  
7 can be an overlay of mental health issues?

8 A Correct, and there often is.

9 Q All right. Let's go back, if we can, to the history of  
10 these programs.

11 My understanding is that earlier in the 60's and 70's, is  
12 that people with these problems and conditions were, in  
13 essence, institutionalized or warehoused; would that be  
14 correct?

15 A Correct.

16 Q And did there then become a movement or an effort to de-  
17 institutionalize and move people out into the community?

18 A Yes, and not necessarily because of the state  
19 representatives thinking that was the humane thing to do. It  
20 was a series of court decisions that said, umm, these folks  
21 have a right to freedoms like anyone else, but of course, when  
22 you take into consideration that under certain circumstances,  
23 they can pose an extreme threat to the safety of other or to  
24 the safety of themselves.

25 Nevertheless, the effort started, or at least the

1 discussion was happening in the 1960's about bringing down the  
2 population in our state, Rainier School and Fircrest School,  
3 which were full with, I am guessing probably a couple thousand  
4 residents in both facilities, and then in the 80's, late 80's,  
5 early 90's, the push became intense to move these folks,  
6 financial reasons and court decisions.

7       What was happening is the men and women who are  
8 developmental disabled so that they couldn't manage in these  
9 institutions, they put them in the State Hospital, even though  
10 they didn't have a diagnosed mental illness, and it was a way  
11 of controlling them, because the staff there were accustomed to  
12 dealing with very difficult patients who were often combative  
13 and destructive. Well, that got to the courts, and the court  
14 ruled that you can't house somebody in a mental hospital if  
15 they don't have a reason to be there, like a diagnosed mental  
16 illness. That really helped contribute to the development of  
17 these programs.

18 Q     So, then as a part of moving out of institutions, as you  
19 talked about, they began developing programs like KTSS to allow  
20 these people to live in the community?

21 A     Correct.

22 Q     Now, tell us, if you would, about Community Protection  
23 programs.

24 A     There is a high percentage of developmentally disabled  
25 people who require constant care, but aren't necessarily a

1 danger to themselves or others. They might be a danger to  
2 themselves, simply because they forgot to turn off the stove or  
3 they smoked a cigarette and forgot to put it out. I mean, that  
4 can happen to somebody who is not disabled.

5 Those folks don't need the 24/7 supervision that we are  
6 talking about, but if you have got a developmentally-disabled  
7 person who is repeatedly acting out sexually in one of these  
8 institutions, and the efforts of the staff in those  
9 institutions have been to no avail, all efforts have been  
10 futile, the -- the behavior persists, then it behooves them to  
11 focus on the safety of the rest of the population by placing  
12 these people somewhere, where they are safe, where they are  
13 protected, and they can get the help they need to hopefully  
14 alter this aggression, which -- which all too often is  
15 sexualized aggression, and it is difficult to deal with,  
16 especially since persons with disabilities are the one  
17 population in our culture that is the most often targeted for  
18 sexual abuse.

19 I went 25 years doing evaluations at Rainier School and  
20 Fircrest without finding one client who had not been sexually  
21 abused in that milieu. Not one, and I am talking 400 people.  
22 And, you know, they are sort of like a population without an  
23 advocate; that is changing. There is more advocacy going on  
24 now. But still, they are vulnerable, they are powerless,  
25 easily manipulated and taken advantage of.

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1           So we need to be protected from those people who are  
2   highly dangerous and could hurt us or our loved ones, but they  
3   need to be protected from other people like them, and from  
4   themselves if they are into self-harm, mutilating behavior.

5   Q     Now, the people who go into the Community Protection  
6   program, am I correct that all of them have to have a  
7   developmental disability?

8   A     Correct.

9   Q     So they all have developmental disabilities, an IQ of 69  
10   or below --

11   A     Yes.

12   Q     Many of them have an overlay of mental health problems, as  
13   you have described?

14   A     Correct.

15   Q     And on top of that, they have either engaged in criminal  
16   activity generally of a sexual nature, or have a propensity to  
17   do that?

18   A     Correct.

19   Q     Are there other reasons that you are aware of or can  
20   remember, that allows a person to go into a Community  
21   Protection program?

22   A     Well, it has got to be behaviorally based. It can be  
23   because this person is going to be homeless. That is not cause  
24   for placement in one of these programs, in my opinion,  
25   unfortunately, but that is the reality of the situation, you

1 know. You hear these fantastic percentages which I don't doubt  
2 at all about the homeless population anywhere in the United  
3 States, having a high percentage of mentally ill. They also  
4 have a high percentage of persons with developmental  
5 disabilities. For reasons that I can't explain to you, that is  
6 not talked about. That doesn't hit the newspaper.

7 Q So when an individual goes into a program, whether it is a  
8 Community Protection program or a program for tenant support,  
9 is there a treatment plan that is developed for those people?

10 A The laws in the state of Washington, require that persons  
11 who -- and this is a voluntary program, by the way, agree to  
12 enter the Community Protection program, have to be involved in  
13 therapy, and that is part of the program, and it is a big piece  
14 of the program, is their weekly involvement with therapists in  
15 the community, and we are fortunate in our state to have a  
16 cadre of therapists who are knowledgeable and experienced at  
17 working with this population, because the treatment is very  
18 different than it is for non-disabled clients.

19 Q So, both sets of clients, the CP clients, and then those  
20 in supported living, each will have a treatment plan?

21 A No, not necessarily the supported living people.

22 Q Okay.

23 A No, that is usually -- in fact, that is usually not  
24 required. If it is requested, the Division of the Disabilities  
25 Administration is sympathetic to that, sensitive to that. They

1 haven't been very responsive to that need expressed by the  
2 client lately because of financial considerations, but rumor  
3 has it that financially things are improving in the state  
4 system.

5 Q So, what is a treatment team?

6 A A treatment team is composed of the client himself or  
7 herself, the treatment provider -- ideally one of the line  
8 staff, one of the staff that works with him on a day to day  
9 basis and is very knowledgeable about his day to day  
10 functioning, and usually somebody from management is sitting  
11 in. And oftentimes, although I am surprised it is not  
12 happening more often, oftentimes the case manager from DDA is a  
13 part of that team, too. When I go to those team meetings, I am  
14 surprised when the case manager is not there, and that team  
15 makes decisions. The therapist may recommend that this  
16 particular client, who is a Community Protection client, has --  
17 has really, really profited from the time in -- in Community  
18 Protection, and has made some significant changes in their  
19 demeanor, and they are ready for a less restrictive  
20 environment. So the team will sit as a group and make  
21 decisions on lifting some of the restrictions on that  
22 individual, on a gradual basis.

23 Q Now, is it important in dealing with the developmentally  
24 disabled, both in the Community Protection and in the supported  
25 living, that staff maintain professional boundaries?

1 A Oh, absolutely.

2 Q Okay, so tell me what professional boundaries mean?

3 A Well, it means that unwavering focus on the needs of that  
4 client. It means -- it means learning all that you can about  
5 that client, his background, his current issues, and what has  
6 worked and what has not worked in day to day dealing with him.

7 Part of keeping that focus is to make sure you never bring  
8 your personal issues to work, and you always keep in mind that  
9 whatever you say and do is going to facilitate positive change  
10 in this client.

11 Q Could it also facilitate negative change?

12 A Oh, yes. I have seen situations where staff have brought  
13 their problems from home, and they have a good relationship  
14 with the clients, so they decided for reasons I can't tell you,  
15 to share their issues with this client, the client having a  
16 sympathetic ear, perhaps, which is totally inappropriate. I  
17 mean, that massively -- that creates enormous insecurities in  
18 that client if it appears to him or her that that staff doesn't  
19 have it together; not that you have to lie or pretend somebody  
20 that you are not, but you keep your personal business to  
21 yourself.

22 Q And that is important for what reason?

23 A Well, part of it is recognizing that every minute you are  
24 with that client, you are a role model for that client, and you  
25 are teaching him what -- when is it appropriate to talk about

1 personal issues and when it isn't. It is important to  
2 reinforce that there are people in his life who are going to  
3 look out for him and be there for him when he is experiencing  
4 problems and difficulties. These clients are not in a position  
5 to help us with our problems. They wouldn't be in the  
6 situation that they are unless they had -- unless they were  
7 troubled individuals. Boundaries is just a crucial issue.

8 Q And if a staff member steps out of the proper professional  
9 boundaries, they go outside, does that have a negative effect  
10 on the clients?

11 A Oh, yes. They -- they are as affected as non-disabled  
12 persons, in picking up on the inconsistencies between what the  
13 person is saying and how they are acting, and when there is a  
14 dissonance between the two, the client, like most of us, is  
15 going to go with what he sees rather than what he hears. He  
16 doesn't have the intellectual wherewithal to process that, or  
17 even to ask the questions of the staff, "Why are you doing  
18 things like this, that I have always been taught are  
19 inappropriate?" Bad, bad role-modeling. And again, it creates  
20 enormous insecurity in the client.

21 Q Is it -- I am struggling with the way to ask this.

22 Is it important when staff are dealing with these  
23 developmentally disabled clients, to maintain what I would  
24 describe as an arms-length professional relationship with the  
25 clients, rather than become too personally involved with the

1 clients?

2 A Absolutely, and I have seen that evolve over time.

3 In the 80's and early 90's, it was acceptable to give your  
4 client a hug, you know; "Atta-boy, good job," a hug and a pat  
5 on the back. Well, there were some staff people and some  
6 clients that abused that and sexualized that affectional  
7 exchange, and so the word came down on high, that is  
8 inappropriate. Any affectional exchange is -- the client can  
9 have it with his own family members, but not with the staff.

10 Q So, clients can misunderstand and misinterpret normal  
11 actions and gestures?

12 A Correct.

13 Q And if somebody goes beyond the normal arms-length  
14 reaction, that can create problems?

15 A Yes.

16 Q Now, would it be reasonable and important for an  
17 organization that provides services to the developmentally  
18 disabled, to limit the staff -- limit the staff's interaction  
19 with the client to their assigned work hours, as --

20 A Oh, yes. Yes. There is no reason to carry that over.  
21 The -- the client needs to get a sense of what the staff person  
22 is all about; that this person cares about me, and is looking  
23 out for me, but there is not going to be any other relationship  
24 beyond the end of the work day or the end of the shift for that  
25 particular staff person. There are other people in that

1 client's life who can provide the emotional affectional support  
2 that is not appropriate for a staff person to provide that.

3 Q So, it is reasonable to have rules and tell staff members  
4 that they can't visit the client outside of their assigned  
5 hours.

6 A Oh, absolutely.

7 Q And what about a rule that says that employees can't  
8 discuss personal issues or work issues within earshot of the  
9 client; is that a reasonable rule?

10 A Oh, absolutely. I would consider that neglect to the  
11 client's needs to do anything else; to talk about conflicts  
12 they might be having with their supervisor or with their fellow  
13 worker. That is not the purview, that is not the -- that is  
14 not an appropriate dialogue to have with a client.

15 Q Well, what if it wasn't a dialogue. What if the staff  
16 member were simply talking about it with another staff member  
17 within earshot of the client?

18 A The same difference; it is going to have the same negative  
19 results.

20 Q What about the idea of a rule that says that it is  
21 forbidden or inappropriate for a staff member to give gifts to  
22 a client, or to loan money to a client?

23 A Absolutely, as it is for other professional -- other  
24 professionals. It is inappropriate; it is unethical.

25 Q Are clients likely to misconstrue what is being done if a

1 staff member makes a loan to a client?

2 A Very easily. The staff -- the client can interpret that  
3 as favoritism, that he has a special place in this staff  
4 person's life. And frankly, so many of the people that we  
5 serve are compelled to test rules, and if they experience a  
6 lack of structure and consistency and predictability in their  
7 lives, they are going to act out those insecurities.

8 Q Well, what about a rule that says that a staff member  
9 can't provide personal information to the client, such as home  
10 addresses or phone numbers or things of that nature? Is that  
11 the --

12 A That is another significant boundary issue. The -- the  
13 client's perception of the staff should be that this person is  
14 a professional who is here to help me out. If they want to  
15 interpret that as friendship, that's fine. I wouldn't -- I  
16 wouldn't contradict them. But what normally entails a  
17 friendship, what we expect from a friendship, cannot happen.  
18 It can't happen, because it is just too confusing to the  
19 client.

20 Q And in -- in this world of DDD -- I'm sorry, all of the  
21 numbers --

22 MR. JENSEN: Those are letters.

23 MR. LOFLAND: Thank you, Counselor.

24 Q BY MR. LOFLAND: In this world of providing services to  
25 developmentally disabled, is there a term or definition of a

1 healthy relationship?

2 A Yeah, I can't quote you one; whatever definition they are  
3 using at Kitsap Tenant Support or LifeForce Services or SL  
4 Start-Up, everyone has a definition of that, but they all have  
5 similar attributes to their definition, which is, there is an  
6 expectation of care and concern, and honesty with your client,  
7 maintaining boundaries, and -- and first and foremost is  
8 communicating. The importance of that staff person  
9 communicating to the next shift person, to the supervisor or  
10 manager, making sure that everybody is on the same page. That  
11 is frankly what the team meeting concept is all about, but  
12 sometimes crises can't wait for that, and when a crisis occurs,  
13 it is reasonable to expect the staff person to report and  
14 discuss whatever the concern is with his or her supervisor.

15 Q Now, let me ask you about another term, triangulation.

16 A Yes.

17 Q Are you familiar with that term?

18 A Yes.

19 Q Could you tell us what that means?

20 A Well, the best way of explaining that is -- is to provide  
21 you an example of what happens.

22 These folks may be developmentally disabled and have an IQ  
23 of 69 or below, which doesn't mean they are stupid. They have  
24 gotten by in their lives by manipulating, exploiting  
25 opportunities, sometimes taking advantage of the vulnerable,

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1 and what they have learned is that sometimes a well-intentioned  
2 staff can be manipulated by their sad stories, and  
3 triangulation is an attempt to play off one staff against  
4 another, so that they can get what they want, and sometimes it  
5 is mobilizing the other clients in the house to lobby for some  
6 privilege -- one privilege or another. So, you have a staff  
7 person come in for shift the next morning, and all of the  
8 clients have decided they are going to go to Disneyland in the  
9 next couple weeks, and no thought to where the money might come  
10 from for that to happen, and then the staff person is stuck  
11 with trying to explain the realities of that decision, which it  
12 may turn out to be a reality, but not in two weeks.

13 Q And can a staff member engage in triangulation?

14 A Yes. Yes. That is a really sad state of affairs when you  
15 have a -- when you have one of the staff lobbying, so to speak,  
16 clients to agree with his point of view about the time off he  
17 wanted to take or switching shifts with another staff, and here  
18 he is recruiting the clients to support his point of view.

19 That is bordering on neglect and abuse of clients. That is so  
20 inappropriate. I am assuming that in the programs around the  
21 state, that would be grounds for a dismissal.

22 Q So, for example, if a staff member told a DD client that  
23 the staff member's supervisor was mean and yelled at the staff  
24 member, would that be an example of triangulation?

25 A Yes.

1 Q Would that ever be appropriate for the staff member to say  
2 that to a client?

3 A Never under any circumstances.

4 Q How -- how do -- how does one avoid triangulation?

5 A By open communication, between and among staff, and I am  
6 including management as part of the staffing.

7 If there is a perceived problem, the staff person has  
8 documented that in writing, he or she passes that on perhaps to  
9 his or her peers, the other staff, and definitely to the  
10 manager or supervisor. That is how you prevent it.

11 Q What happens to the -- what happens to the treatment team  
12 or the balance among the treatment team if one of the members  
13 of the treatment team goes beyond appropriate professional  
14 boundaries?

15 A Well, in my experience, the treatment team members are  
16 pretty astute about what should take place in a residential  
17 situation, and at least the staffings I have been to, the  
18 communication was pretty specific around the subjects of --  
19 concerning interactions between the staff and the clients, or  
20 between client and client, and that is one additional forum,  
21 the treatment team to do some problem-solving about that.

22 Q How important is consistency with client care for the  
23 developmentally disabled?

24 A Absolutely. We are dealing with a client population which  
25 is extremely concrete. They don't have the capacity to

1 abstract and problem solve on that level. They need  
2 predictability in their lives. They need the security of  
3 knowing that tomorrow is going to be somewhat the same as today  
4 in the sense of they have people around them who will make sure  
5 they are safe and taken care of, and that their basic needs and  
6 beyond that will be addressed. There has to be a commitment to  
7 quality of life for the clients. They are not criminals, most  
8 of them. They are people with disabilities.

9 Q And does -- does staff behavior and actions affect the  
10 clients?

11 A Yes. Yes. I can't tell you the number of times I have  
12 run into such horrendous role-modeling such as staff coming to  
13 work under the influence of alcohol or as badly, bringing  
14 alcohol to work, or in one situation, staff providing alcohol  
15 to the clients. The staff condoning and encouraging illegal  
16 behavior, such as -- it may be relatively minor by letting off  
17 fireworks. Well, it is not minor when there is a possibility  
18 of one of the clients losing a finger. I have seen that occur.  
19 I have seen staff that weren't able to manage their own anger  
20 and aggression, and engage in explosive behavior, and even  
21 assault clients -- threaten to assault clients or assault  
22 clients --

23 MR. LOFLAND: Can we take a minute for Mr. Jensen?

24 JUDGE POLLACK: Off the record, please.

25 *[Off the record]*

1 JUDGE POLLACK: Back on the record.

2 Go ahead.

3 Q BY MR. LOFLAND: Is it important that a staff is not  
4 punitive toward a client?

5 A That is really a very basic principle, and I am not  
6 familiar with any of the programs, and I think I am familiar  
7 with all of them in the state of Washington, who do not address  
8 that during their orientation with the client, that this does  
9 not have anything to do with punitive, and punitive is not an  
10 effective strategy anyway, even if it was condoned, which it  
11 never would be. And -- and it is just plain wrong.

12 Q Can the tone of voice that a staff uses adversely affect  
13 the client?

14 A Oh, absolutely.

15 Q Can the tone of voice that a staff member uses toward the  
16 client, adverse the client?

17 A Yes.

18 Q Is -- is -- what about the tone of voice that a staff  
19 member uses towards other people and not the client; say, other  
20 staff members or management. Can that affect the client if the  
21 client hears that tone of voice?

22 A Oh, yes. If he has respect for the person who is making  
23 the comments or projecting the attitude, and he respects that  
24 person, he is going to buy into it that this person is speaking  
25 the truth, and he is going to lose respect for the other staff

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1 and the manager.

2 Q What about the use of sarcasm? Is that something that is  
3 appropriate in front of clients with developmental  
4 disabilities?

5 A A high percentage of our clients just can't grasp that,  
6 but they can grasp the tone of voice, and they are picking up  
7 on something negative is being said, they understand it. That  
8 is almost worse than understanding it because they feel like  
9 they are being denigrated, and they are not understanding how  
10 those words are causing the feel denigrated, but nevertheless,  
11 they feel that way.

12 Q How about in dealing with clients, if a staff member is  
13 sort of demanding and bossy? Is that appropriate?

14 A No, no. That is not what they are there for. They are  
15 not bosses, they are not supervisors. They are -- they are  
16 hopefully in alliance with the client to help the client  
17 achieve his goals, the ultimate goal of being independence, as  
18 much independence as they can possibly manage. And what it  
19 means, fortunately, for a significant of persons in Community  
20 Protection, is that they graduate from that phase of 24/7  
21 supervision to a less-restrictive type of situation where they  
22 might have a staff coming in three days a week and just  
23 checking on them, to make sure they are eating and their health  
24 needs are addressed, and they are safe.

25 Q Now, if -- if a staff member, when asked what that staff

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1 member's job was, dealing with developmentally disabled people,  
2 if that staff member said that his job was to keep the clients  
3 in line, what would they say -- what would that say to you  
4 about that staff member?

5 A Well, he or she views their role as a correctional officer  
6 role, which is not what this is about, even remotely, and I  
7 think at the very least, that person needs to be reoriented to  
8 what their -- what their role should be, and what the  
9 expectations are of the agency.

10 Now, again, they get that in the orientation, but I guess  
11 some people need reminders.

12 Q Even if the staff that that person was serving was a  
13 Community Protection person, would your answer be the same?

14 A Absolutely. Remember, this is a voluntary program. We  
15 want to encourage these people to stay.

16 Unfortunately, there has been a number, not a lot, but a  
17 number who have chosen to opt out because they didn't want to  
18 live with these restrictive procedures anymore, and they are  
19 not doing well.

20 Q Is it appropriate for a staff member to ignore a client  
21 because the staff member became angry because of some action  
22 that the client did?

23 A No, it is reasonable to expect the staff person to rise  
24 above his personal feelings and keep his eye on the ball, and  
25 the ball is what is in the best interest of the client. He

1 needs to suppress his feelings about that. He will have ample  
2 opportunity after shift to go to his supervisor or manager and  
3 complain about whatever it is, or seek consultation.

4 Q Now, if a manager or a supervisor in a program that  
5 provides services to the developmentally disabled learns that a  
6 staff member, shortly before going on shift had become angry  
7 and agitated, would it be reasonable in your mind that the  
8 manager or supervisor contacted that staff member and asked  
9 them whether they were in an appropriate mindset and condition  
10 to go to work with a developmentally disabled client?

11 A I think it would be irresponsible not to do that.

12 Q What is a restrictive procedure?

13 A It is a -- it is a rule that is tailored to this  
14 particular client, based on his history of behavior that  
15 justified a rule against that behavior, such as fire-setting.  
16 So men and women that are in Community Protection and the  
17 primary issue -- the primary anti-social behavior, if you will,  
18 has been arson, it is reasonable to not allow them to have  
19 control over their own matches and lighters, that they not have  
20 combustibles in their bedroom. That if they are cigarette  
21 smokers, that their cigarettes get lit for them by the staff  
22 person, and the staff person monitors them while they are  
23 smoking. That is a restrictive procedure.

24 Q Would I be correct that similarly, if a developmentally  
25 disabled client had a history or propensity toward acting out

1 in a violent manner, would it also be reasonable to restrict  
2 that person from viewing television, video games, or movies  
3 that may have violence in them?

4 A Yes. Because -- because this population can't  
5 intellectualize and process that this is pretend, they tend to  
6 -- they begin to adopt the media presentations as reality, and  
7 how they process that is, is that it is acceptable for Bruce  
8 Willis to shoot fifteen protagonists and kill them all, because  
9 he is on the side of right, and that -- that is clear to the  
10 developmentally disabled person, he is not -- he is not  
11 emphasizing the fact that this is pretend, okay? If it is  
12 visual and he is seeing it, it is real. It only makes sense to  
13 censor that.

14 Q So, is there also a term in this, dealing with  
15 developmentally disabled, of -- it may not be correct, but a  
16 token system or the use of a token system, such as withholding  
17 food or money or recreation?

18 A No, that is a punishment.

19 Q A punishment.

20 A No punishment is allowed.

21 You know, there can be subtle causative reinforcers like,  
22 "Good job, good job, Eddie." But beyond that, you can't be  
23 giving rewards and punishments.

24 Q Well, what about a staff member restricting a client from  
25 having snack food or junk food, unless the client is good? Is

1 that acceptable?

2 A No, that is unacceptable. You can't control that.

3 The only way you can control that is if there is a  
4 doctor's order that says that because of this person's diabetes  
5 or morbid obesity or whatever the issue might be, nutritional  
6 deprivation or neglect, that he should be restricted -- his  
7 sugar intake should be restricted, and that happens often with  
8 the clients. I mean, it is a life-threatening situation.

9 Q But that -- that is a result of a medical provider's, for  
10 lack of a better word, prescription or order, that there needs  
11 to be --

12 A Right, the staff can't do that.

13 Q The staff does not have the authority to make --

14 A No, they don't have the training, experience, or authority  
15 to do that.

16 Q Is it -- is it, absent a medical provider's documented  
17 instructions to withhold food, is it ever acceptable for staff  
18 to lock a client's food up and prohibit their access to it?

19 A No.

20 Q Even if it is candy and other junk food?

21 A No, it is absolutely inappropriate. That is not within  
22 their purview.

23 Q To -- to create an exception -- let me ask you this. Are  
24 you aware of whether DDD or DDA, however you want to put it,  
25 being the same organization --

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1 A Uh-huh.

2 Q -- the Division of Developmental Disabilities or  
3 Administration, or whatever it is, are you aware of whether  
4 they have a policy that prohibits the withholding of food?

5 A Yes, they do.

6 Q And the only exception to that can be through written  
7 medical requirements?

8 A Correct.

9 Q Now, let me ask you a hypothetical if I may do so.

10 A Okay.

11 Q All right. Let's say that there is a Community Protection  
12 client who is male, approximately 22 years of age, who is  
13 behaviorally challenged. That client has ADHD, and is viewed  
14 as being oppositionally defiant, and the person is highly  
15 aggressive, has committed sexual assault against family members  
16 in the past, is obese, refuses to file -- follow diet plans or  
17 instructions, has to be restricted from seeing video games or  
18 movies that involve violence, is verbally aggressive and  
19 physically aggressive, is a fire-setter with fetal alcohol  
20 syndrome and autism, and is viewed as having a mild range of  
21 mental retardation, okay?

22 A Okay.

23 Q In that particular case, is it ever appropriate, to,  
24 without a doctor's orders, to lock the food in the cabinet?

25 A No. They do not have the authority or right to restrict a

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1 client in that way.

2 Q Would a client with those type of behaviors that are  
3 described, is it appropriate for a staff member to be flippanant  
4 in his statements and actions towards others, in front of the  
5 client?

6 A It sounds like verbal abuse to me,

7 Q What if the staff member is angry in front of a client?

8 A We are all human, we all make mistakes; that is absolutely  
9 inappropriate. There is a reasonable expectation that the  
10 staff person is going to control his emotional life and what is  
11 going on internally in response to whatever provocation is  
12 happening around him.

13 You know, there have been situations where I have heard a  
14 staff raise his voice, and some counsel around that subject and  
15 a reminder of who is the client and who is the staff is usually  
16 sufficient to prevent a reoccurrence.

17 Q What if the staff member shows no interest in what the  
18 client is doing?

19 A Well, then I -- if I was a manager, then I would be  
20 counseling the staff to find another job. You have to like  
21 what you are doing, because you ain't going to get rich off of  
22 it, and what you get your satisfaction from is the quality of  
23 the relationship you have with that client or those clients,  
24 and the good feelings you get from providing positive support  
25 and encouragement and maintaining -- and helping them maintain

1 a good quality of life.

2 Q And what if the staff member -- if a supervisor comes to  
3 the house and is sort of defiant to the supervisor or the staff  
4 member, is that appropriate behavior in front of a client like  
5 this?

6 A Oh, no, absolutely not. That is potentially extremely  
7 destructive. It is part of that triangulation again. You  
8 know, he is -- essentially, what it is, whether it is your  
9 intent or not, trying to convince the client to side with you  
10 against management. What? That is not anywhere in that staff  
11 person's job description, and it is so counter-therapeutic for  
12 that client -- if nothing else, the -- the staff need to model  
13 that they can have differences but they solve them by talking  
14 about them, they provide that kind of modeling. And, of  
15 course, the same goes for a staff person in management, but of  
16 course, I don't think the client should be aware that there is  
17 any kind of conflict between the staff person and management.  
18 That is none of that client's concerns, and it can only have a  
19 negative outcome.

20 Q Now, let me give you -- let's move from that and go to a  
21 different hypothetical.

22 Let's say that there is a client who is about -- a female  
23 client about 35 years of age, who -- I guess they call it sort  
24 of in the medium range of developmentally disabled, who is able  
25 to work, who has a history of being raped by men. In fact,

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1 let's say that the client was taken by a person at a younger  
2 age, put in a travel trailer, driven around the country and  
3 repeatedly raped for a year. The client when they came into  
4 the program was bothered and would put staples, like from a  
5 staple gun, into her wrists, and would lay under the bed and  
6 not want to talk to people, especially have any interaction or  
7 contact with men. It took some two years for people in the  
8 program, a male in the program to get the woman to talk to him,  
9 and after a number of years, the woman would actually speak to  
10 him voluntarily, come up and pat him on the shoulder. The  
11 woman would run away frequently and would oftentimes run away  
12 carrying scissors or a knife or something, and the person in  
13 the program has reached a point where they don't call the  
14 police; they can just walk beside the woman and talk and say,  
15 "Would you mind giving me the knife or scissors," and they will  
16 do that. Also, the person is autistic.

17 That type of person with that history, are they going to  
18 have trust issues?

19 A Oh, yes, massive trust issues, particularly in reference  
20 to men, for obvious reasons.

21 Q And from a hypothetical, it would seem that the people  
22 working with her have gained some trust by inducing her to come  
23 out from under the bed, and at least be able to pat certain men  
24 on the shoulders and ask, "How are you?"

25 A I think that is a significant sign of progress.

1 Q Now, if a staff member told that client that the staff  
2 member's male supervisor had been mean to her and had yelled at  
3 her, would that be good for the client?

4 A Oh, my God. That would be disastrous. Are you talking  
5 about the supervisor being one of the few people that this  
6 woman trusts?

7 Q The supervisor being the one who had talked her out from  
8 under the bed, and whom the woman will now pat on the shoulder,  
9 and will give the weapon to when she has run away from home.  
10 That is the person.

11 A Well, it is rather apparent that she developed some trust  
12 over that two-year period in this particular supervisor or  
13 manager, and to sabotage that is unconscionable, because that  
14 is the ground -- the grounding -- the foundation to her being  
15 able to spread trust to other people in her life, or to begin  
16 the process of doing that. If there is one man that she  
17 trusts, that she feels safe with, that is something to build  
18 on. To have somebody interfere with that, to perpetuate the  
19 post-traumatic stress symptoms that this woman apparently has,  
20 it is just incredible.

21 I hope that is truly a hypothetical and not a real  
22 situation, because if it is, she shouldn't be working with  
23 persons with disabilities.

24 Q Now, let's move to another hypothetical.

25 Let's say there is a male approximately fifty years of age

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1 who is autistic, who is intelligent, and can talk about a  
2 number of subjects in great detail. When he talks fast, he  
3 sort of moves his hands sort of as to remember -- if you  
4 remember the movie of years ago, "Rainman," with Dustin  
5 Hoffman?

6 A Yes.

7 Q That is sort of the way the person is, and that person  
8 also gets fixated on subjects, but very autistic. If a staff  
9 member came to that person's house outside of normal work hours  
10 and told that person, "I can't work with you anymore because I  
11 am being let go because I haven't completed paperwork," would  
12 that be appropriate?

13 A I think that would be abusive to the client.

14 Q That would constitute abuse?

15 A Yes. By my definition, that would constitute abuse.

16 Again, sabotaging relationships with that particular staff  
17 person's superiors.

18 Q And if a staff member discussed matters outside of the  
19 workplace, and the workplace meaning, dealing with the staff  
20 and the clients, other matters, would it surprise you that a  
21 person like these described in the hypothetical would become  
22 fixated on it?

23 A Yes -- I mean, no. I would expect her to -- her or him to  
24 become fixated on it. She is trying to -- I don't know if the  
25 client is male or female --

1 Q The client is male.

2 A The client is male, okay. I would expect him to try to  
3 understand it by fixating on it, obsessing and -- which is his  
4 way of processing and trying to understand why this is  
5 happening.

6 Q Would it surprise you that the client in the hypothetical  
7 would still be fixated and processing that a year to a year and  
8 a half later?

9 A No. Unfortunately, that is what autism is about. The  
10 folks get an idea in their minds or they hear something, and it  
11 is intriguing to them, and they stand by it. They will stay on  
12 it for years, and perhaps, the rest of their lives.

13 MR. LOFLAND: Judge, may I have a moment, please?

14 JUDGE POLLACK: Off the record, please.

15 *[Off the record]*

16 JUDGE POLLACK: Back on the record, please.

17 MR. LOFLAND: Those are all of the questions I have.

18 JUDGE POLLACK: Okay, thank you.

19 MR. FIOL: Just one moment.

20 *[Long pause]*

21 MR. FIOL: I am ready, Your Honor.

22 JUDGE POLLACK: Go ahead.

23 **CROSS EXAMINATION**

24 Q BY MR. FIOL: Mr. Comte, good afternoon.

25 A Good afternoon.

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1 Q How are you? My name is Richard Fiol, and I am with the  
2 National Labor Relations Board, along with my co-counsel,  
3 Elizabeth DeVleming.

4 Thank you for coming today.

5 A Yes.

6 Q One question: You are here today to testify in your role  
7 as an expert in this field, correct?

8 A Yes.

9 Q You are not familiar with any of the individuals who are  
10 in the Complaint that the NLRB issued?

11 A I may be, but I was never provided a list of who those  
12 people are.

13 Q Did you ever deal -- were you ever on a treatment team  
14 with an employee named Terry Owens?

15 A The name is not familiar.

16 Q Were you ever part of a treatment team with a person named  
17 Johnnie Driskell?

18 A No.

19 Q Were you ever on a treatment team with a person named  
20 Bonnie Minor?

21 A Not to my knowledge, no.

22 Q I have a couple of questions in this area of Community  
23 Protection program.

24 A Okay.

25 Q These are individuals that need this constant care because

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1 they could be a danger to themselves or to the community,  
2 correct?

3 A That's correct.

4 Q They tend to be, say, under the age of forty; would that  
5 be an accurate statement?

6 A No, there is really no age.

7 Q And is there a goal for these individuals in the program?  
8 Some of them work; is that correct?

9 A Correct, uh-huh.

10 Q And in that work, and again, they have to fit into this  
11 program, they have to have an IQ under 69, correct?

12 A Correct.

13 Q But as you know, there is work for these individuals even  
14 though their IQ is at 69, correct?

15 A That's correct.

16 Q And would you say the goal ideally is that the can  
17 maintain self-sufficiency for the rest of their lives?

18 A With a small percentage, between ten and fifteen percent.

19 Q Would that be the ten to fifteen percent that would  
20 actually succeed in life, and actually -- or is it the other  
21 way? Is it 85 percent that you expect --

22 A The other 85 percent are going to require supervised  
23 living probably for the rest of their lives.

24 Q Either in this program or some other program?

25 A Correct.

1 Q Could that other program -- well, do any of these  
2 individuals come out of a foster care program?

3 A Yes.

4 Q And when they come out of foster care, is there a certain  
5 age where the State can no longer keep them in the foster care  
6 program; is that right?

7 A Correct.

8 Q And then they would go into -- and then they are  
9 considered candidates for the Community Protection program?  
10 The people with a certain IQ and have had other features or  
11 other disabilities.

12 What -- what is the -- what are the options for them? Do  
13 they have to go to this assisted living, or can they live on  
14 their own, or who monitors them after they have to leave foster  
15 care?

16 A Well, in -- in foster care, if a person has a  
17 developmental disability, they have a right to public education  
18 until the age of 21.

19 Q Okay.

20 A And the State, in addition to that, has agreed that if the  
21 person, even if he isn't developmentally disabled, but is in  
22 college between the ages of 19 and 21, services can still be  
23 provided by the State, but we are not talking about that  
24 population. We are talking about persons with disabilities.

25 So, it is usually between that 19 and 21 that they talk

1 about transition to an adult living situation. That will be  
2 defined by whatever their issues are. The least is supported  
3 living.

4 Q Is there a panel that makes a determination as to where  
5 they should go after foster care?

6 A Yes. Well, there is a Community Protection team that  
7 operates out of Olympia.

8 Q In the situation where -- again, if you reach age 18, you  
9 are no longer eligible to stay in the foster care system; is  
10 that correct?

11 A Generally.

12 Q Generally. Is it a healthy thing in your opinion to allow  
13 the person who is the foster parent, to continue to have some  
14 relationship with that individual, even though the state has to  
15 take the individual out of the foster care system?

16 A It depends on the client. It depends on the foster  
17 parent. It depends on any downside that folks -- that any  
18 decision-makers may be aware about that. It could be positive.  
19 I have seen that happen. I have seen that happen where the  
20 client was allowed to continue his relationship with the foster  
21 parent, particularly in a long-term foster care situation.

22 Q How about a situation where the foster parent follows the  
23 foster child into the protected living program? Have you seen  
24 that?

25 A Oh, yes.

1 Q So that could be a positive thing?

2 A It could be, yes.

3 Q And any interactions in that scenario, would you view that  
4 as a positive development for the individual in the program?

5 A Well --

6 MR. LOFLAND: I am going to object to the question. Any  
7 interactions has a rather broad meaning and it is not well-  
8 defined, so the question is really incomprehensible.

9 MR. FIOL: Let me rephrase the question.

10 JUDGE POLLACK: Yes. Go ahead.

11 Q BY MR. FIOL: Okay, Mr. Comte, any communications on a  
12 daily basis, living -- or spending time with the person in the  
13 Community Protection program, in fact, could that be a positive  
14 thing?

15 A Yes.

16 Q And is it a positive thing if the person in the program  
17 continues to listen to the foster parent?

18 A I think that is acceptable, as long as it is not in -- at  
19 odds with what he is being told by his current staff and  
20 clinician, his therapist.

21 Q Now, going on with people in this program and you say that  
22 they are encouraged to work, how much encouragement can they be  
23 given to be active participants in the work place?

24 A Well, maybe a -- there are agencies that have the goal  
25 vocationally of placing these clients in usually sheltered work

1 situations, there is a number of organizations like CenterForce  
2 in Tacoma that gets contracts to do things like package  
3 headphones for the airlines. There is even a group of  
4 developmentally disabled people who work for the vendor who  
5 supplies the food to the planes and packages that.

6 They are encouraged if they are capable.

7 There is an assessment that is done initially, as soon as  
8 they enter the -- the residential care program. There is an  
9 assessment done by the vocational program; what they want to  
10 do, what they are capable of doing, and what they are not  
11 capable of doing, and then hopefully -- things have been tough  
12 the last few years, but there is an effort then made to place  
13 them in something similar. There are all kinds of variables  
14 there. Some of our people just can't sustain their  
15 concentration and focus beyond a few hours. So, the job may be  
16 three hours a day, four days a week, because that is all they  
17 can handle. It is tailored to that particular individual.

18 Q So it is case by case. Some people might actually be  
19 capable of integration more so than others?

20 A Oh, yes.

21 Q And this view, this -- of integration in the workplace,  
22 would you encourage that individual to be a full participant in  
23 the workplace?

24 A Yes.

25 Q As you know, their full participation in the workplace,

1 there is a wide range of full participation in the workplace.

2 A Yes.

3 Q Part of it might be to actually become a member of a  
4 union, correct?

5 A Yes.

6 Q You were talking about the negative effects on clients  
7 when they overhear things.

8 A Yes.

9 Q That are personal prone, I believe was the term that was  
10 used.

11 A Yes.

12 Q Now, you know, with the -- are their guidelines, published  
13 guidelines, that the -- strike that.

14 The Food and Drug Administration, they have guidelines.

15 A Yes.

16 Q Are there other guidelines in this area?

17 A I am not aware of any program that doesn't have  
18 guidelines.

19 Q Are there federal --

20 A I think I have reviewed them all, actually.

21 Q Are they federal guidelines?

22 A No. Well, they are influenced by legal rulings that have  
23 been made over the years. I mean, they are not going to be  
24 quoting a particular case, but in reality, you know, the roots  
25 of some of what we are talking about, it is in violation of

1 federal standards to abuse and neglect a client, too.

2 Q So, they would be influenced obviously, by decisions made  
3 by Federal government agencies, correct?

4 A Yes.

5 Q And you were saying that, in fact, in your time period  
6 working this field, you have seen a change in terms of what is  
7 acceptable behavior, and what is not acceptable behavior, from  
8 the 80's and 90's, to maybe what is going on today.

9 A I think what I was talking about when I was talking about  
10 the changes, is -- is the changes in client personnel, and the  
11 reasons for the developmental disabilities.

12 Not so much in management. If anything has new things  
13 have evolved -- you know, obviously, in the 80's, there wasn't  
14 a lot of rules about accessing the internet for our population,  
15 but given the fact that most of our people are visual learners  
16 and well over half -- probably eighty percent have sexual  
17 issues, viewing pornography, even what is considered legal  
18 pornography, is a trigger to sexual obsessiveness, and a  
19 compulsive need to gratify themselves, sometimes at the expense  
20 of other people. So there is a rule that came along much  
21 later.

22 Q And I think that is a good point, that the fact that it is  
23 almost impossible to screen out all of it. I think something  
24 will always get through.

25 A Yes, but then they have a supportive staff to help explain

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1 to them. That is not real world, what you -- what you saw in  
2 that -- in that hour show, in that sexual -- that is not real.  
3 That is not how people normally interact with each other, and  
4 the client needs to be told that.

5 Q Okay.

6 A Because they don't know differently.

7 Q But not every client is going to be that disabled, or are  
8 they all that disabled --

9 A No, they are not all that disabled. There is a continuum,  
10 yes.

11 Q You were discussing triangulation, and that is a term I  
12 have heard just recently.

13 A Yes.

14 Q I heard that in political terms in the 90's, but you  
15 testified that in terms of the definition, it is when a worker  
16 extends his or her problems to the client; is that my --  
17 explaining the best I can?

18 A Well, there is usually a third party there --

19 Q Right.

20 A -- at somebody's expense, if we added those words. If the  
21 staff is communicating with a client about conflicts that he is  
22 having with another staff or the supervisor, that is  
23 triangulation.

24 Q Okay, so you need a third party. So, two individuals, two  
25 employees, you cannot have triangulation. You need that third

1 party.

2 A Right.

3 Q You were given three hypotheticals. The last one dealing  
4 with a female client who had been raped.

5 A Yes.

6 Q A very sad and tragic personal history.

7 A Yes.

8 Q Do you have any experience with respect to the hiring  
9 process of people who do this direct care for a living, the  
10 people who work for the Company here?

11 A No. I have -- I have conducted countless numbers of  
12 orientations for either prospective or already hired employees,  
13 but I have never been a part of the hiring process.

14 Q Would an individual who is employed be required to know  
15 the full history of each client, unedited, know every sort of  
16 detail about that client's life; is that something that you  
17 would recommend to an employer?

18 A I would recommend that the staff review the person's  
19 chart. In other words, the information that management has  
20 about this particular client, and also that he or she read my  
21 evaluation, which is a pre-requisite to getting into the  
22 program a lot of time. Not just me, but people with my  
23 credentials do, because it is usually a comprehensive report  
24 that pulls in everything that they need to know about working  
25 with this client. What his past has been about, how his past

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1 issues affect his current functioning, and what problems to be  
2 aware of, and how to respond to them.

3 Q So, should they be run through every imaginable situation  
4 and given almost like a classroom hypothetical test, as part of  
5 their training?

6 A No, you can't -- you can't cover every contingency. That  
7 is not necessary.

8 If you have a groundwork of an attitude about what you are  
9 supposed to be doing and how you are supposed to be acting with  
10 these clients, that is a good first start. And then, if there  
11 is a behavior or a serious behavior that is constantly  
12 manifested, then I would expect management or the trainer to  
13 talk about that, and help that person understand what the  
14 behavior is all about, and how to intervene when they see that  
15 behavior. That is reasonable.

16 MR. FIOL: Thank you. Nothing further.

17 Thank you for your time.

18 THE WITNESS: Okay.

19 **CROSS EXAMINATION**

20 Q BY MR. JENSEN: Hello, Doctor.

21 A Just Michael.

22 Q Hello, Michael. My name is Terry Jensen, and I am a  
23 lawyer for the Union in this case.

24 A Okay.

25 Q Thank you for coming by, and I hope you will bear with me,

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1 because my understanding and my vocabulary and knowledge of  
2 your field is extremely limited, so please forgive the dumb  
3 questions --

4 A There is no such thing as a dumb question.

5 Q Don't be so sure.

6 Okay, so just finishing up on what Mr. Fiol was saying,  
7 when each member of the Direct Service Staff -- hereon,  
8 referring to the Staff, should have a good and complete picture  
9 of each client they are working with, correct?

10 A Yes.

11 Q And should read the doctor's analysis and assessment  
12 before they begin the treatment program, correct?

13 A Yes.

14 Q And does that get updated where perhaps a professional,  
15 yourself or somebody else, makes changes in the treatment plan?

16 A Not as often as it should happen. I am doing a wave of  
17 evaluations currently on people who were assessed ten years  
18 ago, and by their own administrative code, the Division was  
19 supposed to do reassessments every three years.

20 But what they do have, is they have weekly progress notes  
21 from the therapists who discusses problems they are dealing  
22 with, or if there isn't problems, documenting the fact that  
23 there is not. There is an expectation that the staff write up  
24 incident reports, if there is an incident, and every year the  
25 Division of Developmental -- there I go again -- the

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1 Disabilities Administration Case Manager does a write-up that  
2 is really thorough, like thirty pages long on this client.

3 Q And when you say they do this, is -- are you to whoever is  
4 at KTSS or in the industry, in general?

5 A In the industry, in general.

6 Q You work -- I gleaned from the testimony that you work  
7 with KTSS fairly often; is that correct?

8 A No. We haven't had a case in common in probably, I want  
9 to say, six years.

10 Q Okay, and when you say "case in common," what -- when you  
11 work with KTSS, what do you do with them?

12 A Well, when I was working with KTSS --

13 Q Yes.

14 A -- I was usually doing the evaluation that outlined the  
15 problem areas and how to respond to them, and back in the day,  
16 ten years ago, I was also doing the treatment in many cases. I  
17 haven't done the treatment in ten years. My practice is  
18 limited to evaluation.

19 Q When you say "treatment," do you mean -- were you a part  
20 of that team who met weekly?

21 A Correct.

22 Q And when you say you were doing the evaluation, I take that  
23 to mean when the clients first come into the program, you are  
24 the one who is assessing them and sending that information out  
25 to the staff?

1 A Correct.

2 Q Okay, thanks.

3 [Long pause]

4 How does it come, if you know the answer to this, the Life  
5 Support Services; do you know what I am talking about?

6 A Yes.

7 Q Okay. How does someone get into that program? Does  
8 somebody petition the State to take them in?

9 I know somebody I am worried about. How do I -- is that  
10 how it happens? I call the State and ask them to take  
11 Elizabeth in?

12 A Well, it --

13 MR. FIOL: So stipulated.

14 [Laughter]

15 A If -- if there is a problem that occurs, hopefully, but  
16 unfortunately the word doesn't get out, parents aren't often  
17 aware that they should, as soon as their child has been  
18 diagnosed with a disability, they should make contact with the  
19 Disabilities Administration, and sign up for future services.  
20 And whenever I see a client that is in that category, I -- I  
21 push, push, push. "Get your son or daughter over there. Have  
22 them assessed by the State staff," and then that client turns  
23 eighteen or nineteen, and parents are saying, "You know what?  
24 We are exhausted, we are done with this. Can you place him?"

25 And they are looking at the problems he has had and some

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1 of them have been concerning. He has absconded a few times and  
2 he has been observed running in traffic. He doesn't have any  
3 regard for his own peril, so he approaches strangers and talks  
4 with them, etc., etc.; there is a myriad of issues.

5 But they don't rise to the level of like felonious  
6 behavior which so many of the Community Protection clients have  
7 engaged in. So, the solution then is, the case manager will  
8 make a recommendation to their own internal team in whatever  
9 area they are at; Tacoma has got one, Seattle has got one --  
10 about housing for this person. More than likely, they are  
11 either going to go into a tenant support situation, or an adult  
12 family home, and an adult family home is a "parent" or "two  
13 parents," that have space available in their home, and take in  
14 two or three developmentally disabled clients, and they have to  
15 meet -- they have to sign a contract, they have to meet the  
16 standards that the State imposes, and then the person becomes a  
17 part of their family.

18 Q I am just guessing that there is probably a shortage of  
19 homes to take in -- to satisfy the entire need; would that be  
20 correct or no, or does everybody get taken care of when they  
21 need help?

22 A No, not everybody is being taken care of. You know, I  
23 have seen Community Protection clients who have opted out of  
24 the program and the Division's position, because of liability  
25 issues, is that, "No, we are not going to serve you at all," so

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1 they are part of the homeless population in King and Pierce  
2 Counties.

3 Q Okay. Sir, you were asked a number of hypotheticals by  
4 Mr. Lofland; I think there were three of them. He would give  
5 you the make-up of a hypothetical person and then a set of  
6 facts that the person went and did this, would that be okay,  
7 and in each case, you said, "My goodness, no."

8 A Yes.

9 Q When you offered those opinions to a hypothetical, that  
10 was based on your accepting at face value all of the  
11 hypothetical facts, correct?

12 A Yes.

13 Q And in many interactions between any two people, there are  
14 typically nuances to this situation, correct?

15 A Correct.

16 Q If a -- now, my hypothetical.

17 A Okay.

18 Q If a staff member were taking care of -- or working with a  
19 client for some period of time, and he was scheduled on  
20 Wednesday at two o'clock to take the client grocery shopping,  
21 but that morning was placed on administrative leave, umm, would  
22 you find it improper for that person -- or harmful to the  
23 client, I should say, for that staff member to drop by and tell  
24 the client, "I can't take you shopping today. I have been  
25 placed on leave."

1 A Yes, I would. Administrative leave carries with it  
2 certain requirements, and one of them is that you don't work,  
3 and -- but I think that it would be appropriate for that staff  
4 person to talk to the supervisor and manager and ask to convey  
5 that information to the client that, "I can't make it. I'm  
6 sorry. Other things have come up."

7 Q Now, listening to the nature of this business and the  
8 nature of the people, the clients who the staff is serving, it  
9 strikes me that this is an extremely difficult job; do you  
10 agree?

11 A Well, of course, it depends on clients. I was getting a  
12 progress report on some of the clients I did know, and boy was  
13 I gratified. They have really progressed and are in much  
14 better control over their impulsivity and aggression.

15 So, you know, it just really depends.

16 Q It depends on what?

17 A Repeat the question again. I have lost --

18 Q Sure. I was saying, I presume from what I have heard, and  
19 I have heard about autistic people and people with all IQ's of  
20 lower than 70 and maybe 52, and people who are maybe felons and  
21 all manner of things, and so I was saying, that I presume that  
22 staff has a very difficult job. Would you agree?

23 A Well, I think in some instances, they have an enormously  
24 difficult job, especially with new clients that they are aware  
25 of and some of them that they are not. They rise, simply

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1 because they have been separated from family, and in that case,  
2 they are really challenged.

3 Q Okay, and in -- and you have -- it sounds to me like you  
4 are very concerned with protecting the clients, aren't you?

5 A Yes, that is all of our missions.

6 Q That is why you are in the business.

7 A Yes.

8 Q You have a passion for that.

9 A I do.

10 Q And you would set the bar very high for staff performance,  
11 wouldn't you?

12 A Well, I don't know what the bar is. I guess, yes. I mean  
13 that --

14 Q Well, let's --

15 A Client safety and security has got to be --

16 Q And well-being --

17 A -- a priority -- and well-being, has to be a priority.

18 Q But as little as what you have -- as you have testified, a  
19 few words here and there can change a conversation from being  
20 appropriate to inappropriate.

21 A Absolutely.

22 Q So, would you expect staff to fall from time to time short  
23 of your expectations?

24 A Yes.

25 Q In that case, when staff does fail, is it your experience

1 and expectation then that management's duty is to let that  
2 staff know immediately of where they are falling short, so that  
3 staff can correct itself?

4 A Yes.

5 Q You also testified in answer to a question that you didn't  
6 think that it was good for -- for staff to bring their  
7 "problems from home" to the clients.

8 A Correct.

9 Q Now, what did you mean by it? Did you mean that a client  
10 should never be told that somebody is late because they had a  
11 dead battery or they lost their power at home, or something --  
12 can they -- are you saying that they can't say that sort of  
13 thing?

14 A Oh, no. No. I am talking about a situation that I was  
15 aware of where a staff person, not with KTSS, but with another  
16 organization, discussed with the client his pending divorce,  
17 and his perception -- his feelings about his spouse, soon to be  
18 ex-spouse. That is personal business.

19 Q I know I have a few more questions for you, but the good  
20 news is that I have to go to my doctor here soon.

21 Do you have any opinion on what sort of training staff  
22 should have before they are turned loose, so to speak, to work  
23 with the kinds of people that KTSS provides services to?

24 A Yes, and this goes for all of the programs.

25 I feel there needs to be an orientation to -- well, what

1 we are talking about today. The history of alternative living,  
2 information about the client, maybe not so much emphasis on how  
3 he got there in terms of the specific contributions to his  
4 developmental disability, but how his disability manifests in  
5 terms of strengths and weaknesses in living his life, and  
6 again, how to intervene, and emphasis on chain of command, and  
7 importance of communication between and among the staff and the  
8 managers. That kind of thing I think is an absolute necessity.

9 Q What kind of time does it take to do that?

10 A Well, of course, everybody is different in terms of how  
11 they process information and recall it, but I would like that  
12 it would be at least a couple of weeks.

13 *[Long pause]*

14 Q Is it improper for a staff member to compliment a client  
15 about how they look or how they are performing work or their  
16 chores or --

17 A No, I think that is very appropriate.

18 Q Is it appropriate for them to offer criticism in the sense  
19 of saying, "You have fallen short here," or "You tried to walk  
20 out without your pants on or without your shift on," or "You  
21 failed to brush your teeth." Is that appropriate, as well?

22 A Well, I think it is appropriate to give that feedback to  
23 the client without labeling it. You know, "What's the matter  
24 with you? Are you an idiot?"

25 That is not appropriate.

1 Q How you deliver the message --

2 A It is how you deliver the message, yes.

3 Q That is your issue there, isn't it?

4 A Yes.

5 Q Not that they are imparting the information.

6 A No.

7 Q That is a good thing that they are imparting the  
8 information.

9 A That is -- they need to impart information like you  
10 described.

11 Q Okay. If I can give you another hypothetical --

12 A staff member is taking a number of clients, let's say  
13 three, to go shopping, Wal-Mart, that is part of their  
14 activities. And, they are going through the checkout line and  
15 one of the client's Food Stamps or Wal-Mart card or whatever  
16 they are using, comes up \$10.00 short, and so rather than make  
17 them all wait and go back and put things back on the shelves  
18 and do whatever you do, and embarrass them, the staff member  
19 uses her credit card for \$10.00 to get it covered, and then  
20 seeks reimbursement. Do you consider that a gift?

21 A Well, it is probably a gift. I really see it as  
22 inappropriate and a terrible precedent to be setting.

23 What we want to do is, we want to make their living  
24 experience to be as real as possible, and if I don't have  
25 enough money when I go to the grocery store, I have to put a

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1 couple of items back, to make sure I have money to cover what  
2 is remaining, and I think that is reasonable with our clients,  
3 too.

4 So, it is a life lesson.

5 MR. JENSEN: I don't think I have anything else for Mr.  
6 Comte.

7 JUDGE POLLACK: Is there any redirect?

8 MR. LOFLAND: If I may.

9 **REDIRECT EXAMINATION**

10 Q BY MR. LOFLAND: Mr. Comte, can a staff member who doesn't  
11 have empathy toward the clients, successfully work in the DD  
12 field?

13 A It would be really difficult, because that is really a  
14 need that ninety percent of our clients have; the other ten  
15 percent don't care, because they don't even understand the  
16 language of emotion.

17 But -- but most need somebody who can identify with what  
18 their experiences are, and be sympathetic where that is  
19 appropriate. Fortunately, people that lack empathy usually  
20 stand out, but sometimes they slip through, and you may not be  
21 able to teach somebody to be empathetic, but you can teach  
22 somebody how to act empathetic, break it down to behavior. I  
23 have seen some success with staff that have kind of got through  
24 the screening process and gotten hired, and it turns out that  
25 they are not very empathetic, and then management needs to

1 provide some training for that person, on how to act

2 empathetic, even if they are not going to be, even if that is

3 not going to get internalized.

4 Q Are you, by any chance, aware of the type of training that

5 Kitsap Tenant Support Services provides to its staff members?

6 A Some, yes.

7 Q And would you say, from what you are aware, that the staff

8 -- that the training provided to staff by KTSS meets the

9 requirements for staff?

10 A My understanding is that it goes beyond the requirements.

11 Q Is it above and beyond what most people in the industry

12 provide?

13 A Yes.

14 Q Let me just go back and clarify a brief thing about the

15 Community Protection program.

16 A Yes.

17 Q Is my understanding correct that to enter the CP program,

18 the person must be at least eighteen years of age?

19 MR. JENSEN: I object. This is way beyond anything that

20 was --

21 JUDGE POLLACK: Overruled. Go ahead.

22 THE WITNESS: Yes.

23 Q BY MR. LOFLAND: Now, Mr. Fiol talked to you about a

24 situation where there was a person who was in foster care, and

25 where the foster care mother follows the person into a program

1 where there is Community Protection or Tenant Support, or  
2 something like that. Do you remember that question?

3 A Yes.

4 Q If the foster care parent follows, they then become an  
5 employee of the organization providing the care, correct?

6 A I'm sorry, repeat the question.

7 Q If the foster mother follows the foster son into a  
8 Community Protection program, the foster mother then -- to do  
9 so, they have to become an employee of the company, like KTSS  
10 is providing the services.

11 A Well, I think -- I think foster mom's should be treated  
12 and have the same rights and responsibilities as a biological  
13 parent, in that instance.

14 Q Okay, so your conversation or your discussion with Mr.  
15 Fiol was that the foster mother followed in terms of being able  
16 to visit in the program.

17 A Yes, and provide possibly a nurturing presence for that  
18 client, but not in a staff role. That is conflict of interest.

19 Q Now, work -- clients who work, would it be correct that  
20 they have the choice to work or not work?

21 A Oh, yes.

22 Q Even though they are encouraged to do so?

23 A Yes.

24 MR. LOFLAND: Thank you.

25 I have nothing further.

1 JUDGE POLLACK: Anything else?

2 MR. FIOL: Yes.

3 **RECROSS EXAMINATION**

4 Q BY MR. FIOL: Okay, Mr. Comte, I just wanted to follow up  
5 on some of the questions that Mr. Lofland just asked you.

6 A Okay.

7 Q Starting with the next to the last question regarding the  
8 situation with the foster mother following the foster son, once  
9 the foster son is taken out.

10 A Yes.

11 Q And put into Community Protection -- you said that that  
12 was -- that you would not -- that you do not think that that  
13 would be a healthy thing to have that person on as a staff  
14 person --

15 MR. LOFLAND: That is not what he said.

16 MR. FIOL: Well, I --

17 Q BY MR. FIOL: Did you say that you would not recommend  
18 that the person become a staff member? Was that your --

19 A Yeah, that question wasn't posed, but now that you are  
20 asking it, I would say that it would not be appropriate for  
21 that person to become a staff member.

22 Q So, a company should not hire someone who is a foster  
23 mother if they -- if they know it is the foster mother, not  
24 hire that person to work in a house where the foster son was  
25 put into the Community Protection program.

1 A I think not. I don't think that would be appropriate.

2 Q And they should at least -- if they did so, then they  
3 should monitor it and find out if they did, if that is the  
4 case, correct?

5 A Yes, yes, and I would like to hear the rationale or the  
6 justification for allowing that. There may be good reason,  
7 but --

8 Q Okay.

9 A -- all things being equal, no.

10 Q Now, you also said that a person who lacks empathy would  
11 usually stand out in an interview; is that correct?

12 A Yes.

13 Q So, if -- what would you recommend in terms of the  
14 interview process to screen these people out, if these people  
15 were applying for work in the Community Protection program?

16 MR. LOFLAND: I object. It is not relevant.

17 MR. FIOL: I think it is. I think he told me that it was  
18 standing out and so if people got through and that the goal  
19 here is to protect individuals in a Community Protection  
20 program, you would want to have the best possible screening  
21 process, correct?

22 THE WITNESS: Yes.

23 Q BY MR. FIOL: And let's say a person gets through the  
24 screening process and lacks empathy --

25 A Yes.

1 Q And should there be work -- let me rephrase. I am trying  
2 to frame the question the way I would like.

3 How often would you recommend that the Company monitor the  
4 house and come in to check the house, on a monthly basis?

5 MR. LOFLAND: He just gave the answer he wants.

6 Q BY MR. FIOL: How often -- how often --

7 MR. LOFLAND: Let me finish, Counsel.

8 MR. FIOL: Well, I thought --

9 MR. LOFLAND: I haven't finished. You were talking --

10 MR. FIOL: Okay, go ahead and finish.

11 MR. LOFLAND: He asked the question of how often does he  
12 recommend and then he said on a monthly basis. If he wants to  
13 ask the question --

14 MR. FIOL: I will -- are you finished?

15 MR. LOFLAND: No, that's why I continued talking but you  
16 talk over me.

17 JUDGE POLLACK: All right, please.

18 MR. LOFLAND: My objection is that he just gave the  
19 answer.

20 JUDGE POLLACK: All right, go ahead and ask the question  
21 without suggesting the answer.

22 Q BY MR. FIOL: Same question. On a monthly basis, how  
23 often should the management staff visit the house?

24 A Well, that, too, is a very individual thing.

25 If -- I think even intuition is a justification for making

1 a more frequent check of that house randomly, in order to  
2 determine that the staff are interacting with clients up to the  
3 standards required by Federal government, the State of  
4 Washington, and the program rules in themselves.

5 I am in favor of that kind of oversight, and as often as  
6 is felt necessary, and we have to trust that the managers are  
7 astute enough to recognize the importance of that, and exercise  
8 that liberally. That is the best way of finding out. There  
9 shouldn't be any reason to notify the staff that you are going  
10 to come and do a visit. I think you should be able to do that  
11 randomly, and once a month in an established house that has  
12 been around for a long time, with a stable staff. That is  
13 probably adequate.

14 With a new client or a new staff, or a combination of  
15 both, I think it would behoove management to have more often --  
16 more frequent checks, maybe once a week.

17 Q And as a follow-up on that, what if an individual who is  
18 hired on was not -- I will strike that and rephrase the  
19 question.

20 What if you were told that an individual employee had not  
21 been checked on in months by management staff, what would your  
22 position be?

23 A Well, I would want to find out why, and as I suspect,  
24 because I have seen that occur numerous times, it was because  
25 again, it was a stable client base. The two or three clients

1 there had been months, or perhaps years without problems, and  
2 there hasn't been any staff turnover in months or even years,  
3 and there was really no reason. The normal daytime  
4 interactions that the manager is having with staff, even by  
5 telephone, might be sufficient.

6 Q How about a situation where newly-placed staff person is  
7 put in a house, what would your recommendation be in terms of  
8 following up and checking on the house?

9 A Well, if -- if it is a new person with a -- with clients  
10 who can be volatile or provocative, I added that, it should  
11 probably be frequent. It should be every other week, at least.

12 MR. FIOL: No further questions.

13 *[Long pause]*

14 **FURTHER REDIRECT EXAMINATION**

15 Q BY MR. LOFLAND: I believe that you had said that --

16 MR. JENSEN: Excuse me, Your Honor. Have we had our two  
17 go-arounds?

18 JUDGE POLLACK: Yeah.

19 That's it.

20 MR. LOFLAND: Okay.

21 THE WITNESS: Am I all done?

22 JUDGE POLLACK: You are done, yes.

23 THE WITNESS: Thank you, Your Honor.

24 JUDGE POLLACK: Thank you.

25 *[Witness excused]*

1 JUDGE POLLACK: Off the record, please.

2 *[Off the record]*

3 JUDGE POLLACK: Back on the record.

4 We will resume tomorrow morning at 9:00.

5 Off the record.

6 *[End 3:20 p.m.]*

7 *[Whereupon, the hearing was adjourned until 9:00 a.m.,*

8 *September 18, 2013.]*

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Argie Reporting Service  
5900 Nieman Road, Suite 200  
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Phone: (913) 422-5198

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 19**

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,  
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party

Cases: 19-CA-74715  
19-CA-79006  
19-CA-82869  
19-CA-86006  
19-CA-88935  
19-CA-88938  
19-CA-90108  
19-CA-96118  
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before **JAY R. POLLACK, Administrative Law Judge**, at the National Labor Relations Board, Region 19, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on Tuesday, September 18, 2013, at 9:05 a.m.

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A P P E A R A N C E S**On Behalf of the Counsel for General Counsel:****RICHARD FIOL, ESQ.****ELIZABETH DeVLEMING, ESQ.**

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1 A I was at the table and it seemed like they were going  
2 both ways.

3 Q The initial bargaining session, I believe, was July 13.  
4 Does that ring true with you?

5 A It seems to be true, yes.

6 Q The union came in and they read through -- introduced all  
7 the articles in their proposal, right?

8 A Yes.

9 Q They brought the proposal at that time.

10 A They read each one, yes.

11 Q Did they give to you in advance or just at the meeting?

12 A At the meeting.

13 Q They introduced each article. Did they read each one or  
14 discuss --

15 A They read each one.

16 Q Did the Employer have questions about those articles?

17 A Very little.

18 Q Did you fully understand everything the union was asking  
19 for and why they wanted that?

20 A What had been read to me, obviously, I wanted to look  
21 at. It's the first union contract I'd ever looked at.

22 Q Were -- did you have any questions of the union?

23 A Like I said, we had very little.

24 Q That implies to me -- but let me just ask for the  
25 record, other than the union reading their proposed articles,

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1 there was little, if any, discussion --

2 A In that initial session, yes.

3 Q There was some testimony earlier in this hearing --

4 you've been in the hearing throughout, haven't you?

5 A That's correct, yes.

6 Q About the union having the ability to its bargaining

7 team to the hearing during negotiating sessions.

8 MR. LOFLAND: I'm sorry, I misunderstood the question. I

9 think the question was, there's testimony about the union

10 having trouble getting its bargaining team to the hearing

11 during negotiations.

12 MR. JENSEN: Let me rephrase it. Your point's well taken.

13 Q Do you recall who was on the union bargaining committee?

14 A Yes.

15 Q Who was that?

16 A Al Quadroche, Lisa Hennings-Lucas, Ashley Klocke, Gary

17 Martell, Johnnie Driskell.

18 Q Not Lenora Jones?

19 A No.

20 Q Okay.

21 A She might've been chosen, I didn't see her there.

22 Q I'm only asking who you saw. The union did send a message

23 to the Employer who was on the committee, correct?

24 A I think --

25 Q You don't know?

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1 A I can't recall. An email might've come out.

2 Q Was there -- did KTSS have some rule or procedure or  
3 protocol that you needed a certain amount of notice in order  
4 for those employees miss their scheduled shifts and be  
5 present at negotiations?

6 A I think we were treating it like a normal request for  
7 leave.

8 Q Sick leave?

9 A Yeah, that's what it's always been on the form.

10 Q That's true even if an employee came to KTSS and said,  
11 hey, I'm supposed to be at this house at that day and I've  
12 got this person who agreed to work for me. You still needed  
13 the advance notice that you wanted?

14 A It's protocol.

15 Q KTSS wanted to meet for negotiations between standard  
16 business hours of something like 9:00 to 5:00, correct?

17 A That's correct.

18 Q The union offered to meet evenings or weekends, did it  
19 not?

20 A It did, yes.

21 Q KTSS said no to that, correct?

22 A That's correct.

23 Q Do you know why?

24 A I think those were the hours we were most available. I  
25 think that made the most sense. I think any of the shifts

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1 would've been unavailable for -- you know, it would've been  
2 difficult for somebody.

3 Q In terms of dealing with the union when you were dealing  
4 with the union, you personally, your contact points were Tim  
5 Tharp and Sarah Clifthorn. Is that right?

6 A That's correct.

7 Q Nobody else?

8 A No, nobody else.

9 Q The union was certified about mid-March of 2012. Is  
10 that right?

11 A That sounds about right, I can't be certain without  
12 having it in front of me.

13 Q Ashley Klocke, who was on the bargaining committee, she's  
14 not employed any longer, is she or is she?

15 A Oh, yeah.

16 Q Is she?

17 A Yeah, of course.

18 Q Was she placed on administrative leave?

19 A For several days.

20 Q That was over her objection?

21 A Not really, no. Objection means she objected to it?

22 Q Yes.

23 A No, she -- it wasn't over discipline.

24 Q And it was because?

25 A We received evidence that she was pregnant and we wanted

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1 Q Under your proposal even to this day, I want to address  
2 the management rights clause for a moment. As you understand  
3 your proposal as even today, under your management rights  
4 clause, are there any management rights that you have  
5 conceded to the union? You've conceded that you no longer  
6 have rights to do anything?

7 A I would have to look at the proposals.

8 Q Anything you know about off the top of your head?

9 A I can't pick anything off the top of my head, no.

10 Q There were some mandatory meetings, right?

11 A Would you please explain?

12 Q Yeah, the Employer held some mandatory meetings that  
13 told employees to come in and listen to their -- what the  
14 company wanted said about the union campaign?

15 A We hired a consultant, yes.

16 Q The person's name is in the complaint, Paul --

17 A Pat O'Mara.

18 Q Were you at any of these facilities when these meetings  
19 were going on?

20 A I was in my office, but I wasn't at the meeting. The  
21 meeting was held in a conference room in our office that's in  
22 our building.

23 Q I understand there were several meetings, right?

24 A Yes.

25 Q So that each employee would get a chance to come in and

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1 hear?

2 A That's correct.

3 Q Did you know in advance generally or even specifically  
4 any of the subjects Mr. O'Mara would talk about?

5 A Because we were new to the union campaign as well, he  
6 went through with the management what the union is. He gave  
7 us the quick 4-1-1 on what could happen. But as far as the  
8 rest of it, I wasn't involved.

9 Q How long did the meetings last?

10 A I think maybe 45 minutes to an hour, at the most. They  
11 were set up every hour and a half maybe.

12 Q Were they all on the same day?

13 A I think we did them in two days, if my memory's right.

14 Q Do you remember the dates?

15 A I don't.

16 Q Do you remember the days of the week?

17 A I don't. It's a long time ago, I'm sorry. I can go on  
18 my calendar and find it.

19 Q After each meeting, Mr. O'Mara came back and talked with  
20 some of the managers?

21 A Not really, just the fact that he was -- there wasn't  
22 like an official meeting held.

23 Q Otherwise, did he ever come back to management and  
24 discuss what went on and who said what in those meetings?

25 A Not really. I think a couple of times he said that it

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1 got heated. He would say people were asking questions. I  
2 think he even told us a couple times what the questions were.

3 Q Is it your testimony that he didn't come back and tell  
4 you who'd asked questions?

5 A He didn't tell me that, no.

6 Q Do you know if he told anybody else that?

7 A I don't have any idea.

8 Q Was there no debriefing where Mr. O'Mara -- he didn't  
9 tell you in advance what he was going to say, correct?

10 A No, he gave an initial orientation on what the  
11 presentation looked like and what the union looks like.

12 Q Other than that --

13 A He gave us a booklet, gave us a handout.

14 Q That's what he told you in advance?

15 A That's correct.

16 Q After he spoke, no debriefing where he said, Here's what  
17 I said, here's what went on, here's who said what?

18 A Very little.

19 Q When was that little bit?

20 A Like I said, I was working, so we were all on shifts.  
21 He would walk down the hallway and we would shoot the breeze  
22 a little bit, but there was no official -- there's nothing I  
23 can point out that was noteworthy.

24 Q KTSS, in 2012, turned in the names of Hannah Gates,  
25 Alicia Sale, Lenora Jones to the state for possible abuse of

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1 clients, correct?

2 A Yes, I believe so.

3 Q The state didn't find in any case that they'd done  
4 anything wrong, did they?

5 A Correct.

6 Q Johnnie Driskell, there was testimony about an experience  
7 where she went to a client's home and there was a TV remote at  
8 issue. Do you remember that testimony?

9 A I do.

10 Q The word, assault, was used somewhere in that testimony.

11 A Yes.

12 Q Was Johnnie Driskell ever turned in to the state for  
13 possible abuse?

14 A Yes.

15 Q In that instance?

16 A Yes.

17 Q Did they find she did anything wrong?

18 A They did not.

19 Q Who turned her in?

20 A In that case, I don't remember. We do an incident report,  
21 we either fax the incident report in or make a phone call or  
22 both. So either myself or one of my program assistants.

23 Q Do you know when that was done approximately?

24 A Immediately.

25 Q Around the time of the incident?

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1 A That's correct.

2 Q I'll take randomly the date of January 1, 2012.

3 A Okay.

4 Q Let me ask you at that time, to the best of your  
5 knowledge, how many employees were employed in the bargaining  
6 unit?

7 A Maybe 100.

8 Q If we went back to the beginning of 2009, would that 100  
9 bargaining unit employees be a typical to average number?

10 A If we'd been going through this back then, how many would  
11 be in a bargaining unit? Because we weren't --

12 Q I think you're on the same line I am, but when I define  
13 the bargaining unit, I'm talking about the job classifications  
14 the union represents.

15 A Okay.

16 Q If we take those job classifications and the employees who  
17 populated them, if we went back to 2009, '10, '11, '12, would  
18 they all -- would it typically be about 100?

19 A Our program changed over the years with different  
20 contracts, but in '09, probably the same.

21 Q All the way through that time period?

22 A Yes, and we change percentage each month with new clients,  
23 clients leaving, coming.

24 Q Sure. On average --

25 A There wasn't a crazy difference, if that's what you're

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1 asking. It wasn't a massive change.

2 Q Is that about true today, about 100?

3 A Yeah, between 100 and maybe 120.

4 Q Okay. Other than bargaining unit, you have  
5 administrators, people work in the office, right?

6 A We have folks who work in the office, yes. We only have  
7 one administrator, though.

8 Q How many work in the office that aren't in the bargaining  
9 unit, about five?

10 A There's 12.

11 Q The community protection program was excluded from the  
12 unit by the Labor Board, right?

13 A That's correct.

14 Q How many are in that program approximately?

15 MR. LOFLAND: How many employees or how many --

16 MR. JENSEN: Employees.

17 A We range between 40 and 60.

18 Q Are there other employees at KTSS besides those I just  
19 asked you about?

20 A No.

21 Q Okay.

22 **(Long pause)**

23 Q Is the turnover high at KTSS? Voluntary turnover?

24 A Relatively speaking to the field?

25 A No, just -- let me ask you, describe the voluntary

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1 turnover. At what rate does that happen?

2 A All turnover together is between 35% and 40% usually.

3 Q Per year?

4 A Yes, correct.

5 Q Are you -- is that descriptive of the bargaining unit?

6 A No, the KTSS side, I don't really -- I didn't pull it out

7 and see what the bargaining unit looks like.

8 Q Any reason to think it's any different one way or the

9 other?

10 A I wouldn't think so, I don't know.

11 Q KTSS does annual evaluations for each unit employee?

12 A For each staff member, yes.

13 Q For what purpose?

14 A To assess how they're doing for the year.

15 Q Is it used for teaching and correcting?

16 A It could be.

17 Q Is that one of the purposes?

18 A It could be.

19 Q Who does the evaluations for the employees?

20 A Usually whoever's in HR at the time, and then they'll

21 get together with a program manager from that program.

22 Q The program manager -- what's your title again?

23 A I'm program manager. Underneath me is program

24 coordinator, so I should say that. We use supervisors,

25 coordinators, managers. Unfortunately, that's just the words

1 A Yes.

2 Q The Board decided otherwise, correct?

3 A Yes.

4 Q Whatever the merits of those views, since the Board  
5 hearing decision -- announced its decision -- and that was  
6 not appealed, right?

7 A I don't believe so.

8 Q Has KTSS changed the duties and responsibilities of the  
9 HOH function since that Board decision?

10 A No.

11 Q Are clients that the bargaining unit employees work with,  
12 are they tested for HIV/AIDS?

13 A No.

14 Q Is staff?

15 A No.

16 Q I want to ask you a few questions now about some of the  
17 employees who have been up here and testified.

18 A Okay.

19 Q First I want to ask some questions in regard to Bonnie  
20 Minor.

21 A Okay.

22 Q In December of 2011, who was Bonnie's direct supervisor?

23 A Me.

24 Q And the term I've heard and I've seen, tell me at KTSS  
25 what's meant by direct supervisor? Is it only one?

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- 1 A No, it's the next person above you.
- 2 Q For Bonnie, did she work under a head of household at
- 3 the time?
- 4 A Bonnie was a head of household.
- 5 Q Did she work under a program manager?
- 6 A I run that program.
- 7 Q Okay.
- 8 A I'm the program manager of the company, but I also run
- 9 the community protection program as we don't have a
- 10 coordinator in that program.
- 11 Q She was in the community protection program?
- 12 A That's correct.
- 13 Q The termination letter says she was insubordinate. To
- 14 whom was she insubordinate?
- 15 A To me, I'm the one that talked to her and explained the
- 16 rules.
- 17 Q How was she insubordinate to you?
- 18 A She wasn't following the rules that I set out.
- 19 Q What rules and when did you set them out?
- 20 A The ongoing rules in regards to the client party.
- 21 Q When did you first set out rules for her as to a client
- 22 party?
- 23 A We've been doing those same client parties since I
- 24 started.
- 25 Q But when did you set out rules to Bonnie Minor?

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1 A I didn't physically give her rules.

2 Q Did you specifically speak of the rules?

3 A Me and her had talked about it, yes.

4 Q When?

5 A I don't have days. I mean, I did her initial  
6 orientation as well.

7 Q You heard her testify that she was never given any  
8 instruction.

9 A Yes, I understand.

10 Q Do you have any specific recollection to the contrary?

11 A I have to be honest with you, those parties are the  
12 norm.

13 Q What do you think you told her that was -- that she did  
14 differently than what you had instructed her to do at some  
15 earlier time?

16 A Well, she canceled a party, for one. I definitely  
17 didn't instruct her to cancel the party. Apparently, she was  
18 telling the clients and staff that they could eat the client  
19 food prior to this. That's what she told me. She thought  
20 the staff, herself included, could eat the client's food that  
21 they purchased. I know she had communication with client  
22 resources as well about how to have the party.

23 Q Did you feel that Bonnie Minor's actions in regard to  
24 that party violated the Washington Administrative Code in any  
25 way?

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- 1 A I think it was cruel.
- 2 Q You think it was what?
- 3 A I think it was cruel.
- 4 Q Was she turned in to the state by you?
- 5 A I can't remember in that instance.
- 6 Q Let me go to the next question, the state never found
- 7 she did anything wrong, did they?
- 8 A Like I said, I don't know that we turned her in for
- 9 that. In my eyes, it was cruel to cancel the party.
- 10 Q But then when you talked to her, she immediately
- 11 rescheduled the party, just as you directed.
- 12 A She did, yes.
- 13 Q You heard her talk about someone named Johnson who worked
- 14 with her on setting up the party?
- 15 A Yes.
- 16 Q I think Johnson is the fellow's first name, right?
- 17 A That is correct.
- 18 Q I don't know the last name.
- 19 A His last name is Ezebrio.
- 20 Q Could you spell that please for the record?
- 21 A E-z-e-b-r-i-o. I believe that's how it's spelled.
- 22 Q She testified she didn't believe he was disciplined. Was
- 23 he disciplined for this?
- 24 A I didn't know that he did anything wrong.
- 25 Q She told you he worked hand-in-hand with her on all this,

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1 didn't she?

2 A Yeah, but Johnson didn't cancel the party.

3 Q So the messenger is the one that got the punishment?

4 A I got the message from the client that she'd cancelled  
5 the party.

6 Q But before you terminated her, she told you that she and  
7 Johnson were hand-in-hand on it.

8 A She did not.

9 **(Long pause)**

10 A If I could go back a little bit and re-answer that.  
11 What she did tell me was that the party was held at Johnson's  
12 house because he had a larger house, so they were meeting at  
13 the Rainier House. But that was the extent of that  
14 conversation in regards to Johnson.

15 Q Who decided to terminate Bonnie?

16 A It was ultimately my decision.

17 Q Was somebody else in on this?

18 A I run everything by my administrator and talk to Mr.  
19 Lofland as well.

20 Q The administrator being who?

21 A Michael Closser.

22 Q Are you the one who generated the idea or did somebody  
23 else come to you and say, We better terminate her?

24 A The system in place is that I make the recommendation  
25 and give it to the CEO.

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1 Q Okay. When did you decide to terminate Bonnie Minor?

2 A I couldn't tell you the exact date. I can look at my  
3 memos.

4 Q Do you have them here?

5 A I don't have them in front of me.

6 Q Where are the memos?

7 A In her file.

8 Q That's interesting. You testified on May 28th, correct?

9 A May 28th?

10 Q In this matter.

11 A Up in the other room?

12 Q Yes.

13 A Yes.

14 Q At that time, you were asked some questions about Bonnie  
15 Minor and you said you have to review her file to know  
16 better. Do you remember that?

17 MR. LOFLAND: I'm sorry, I don't know what he said on May  
18 28th is relevant. Ask questions about what he did. What he  
19 said before is not relevant in this issue.

20 MR. JENSEN: The point, Your Honor, is he did say he'd  
21 have to look at those. On May 28, I believe he made the same  
22 remark. I was ask next, has he reviewed those documents in  
23 preparation for today.

24 JUDGE POLLACK: Go ahead.

25 Q That's the question, sir, have you -- since May 28, have

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1 you gone back and reviewed the information on Bonnie Minor?

2 A Yes.

3 Q Thank you. So do you know when -- did it tell you when  
4 you decided to fire her?

5 A I don't have that in memory.

6 Q Those records would presumably show you that?

7 A Yes.

8 Q At the time she was -- you decided to fire her, you knew  
9 she was a union supporter, didn't you?

10 A I don't know that for sure. I can't say yes to that.

11 Q You knew before this hearing she was a union supporter.

12 A Before this hearing today?

13 Q Yes.

14 A Yes.

15 Q You knew before the Board issued a complaint she was a  
16 union supporter, didn't you?

17 A Yes.

18 Q How'd you first learn?

19 A I think her picture was on that flyer, so it was obvious  
20 at that point. It said, We, the undersigned --

21 Q How did you get the flyer?

22 A I think somebody dropped it off to our front counter, I  
23 don't know who.

24 Q Did you post it on your wall?

25 A No.

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- 1 Q When did you get a copy of that flyer?
- 2 A Sometime middle of December.
- 3 Q Who informed Bonnie Minor she was being terminated?
- 4 A I believe Cathy did in HR.
- 5 Q Why did she do that?
- 6 A I asked her to.
- 7 Q Do you know what time of day that was?
- 8 A I do not.
- 9 Q Was she alone when she called?
- 10 A I don't know.
- 11 Q Did she have any kind of script to follow?
- 12 A Script to follow as far as termination?
- 13 Q What she's going to tell Bonnie.
- 14 A No.
- 15 Q Why did Brice sign the termination letter?
- 16 A That's correct.
- 17 Q Why did she sign it?
- 18 A She took it upon herself to write it.
- 19 Q Was there any investigation done with Bonnie prior to
- 20 termination, other than your conversation with her?
- 21 A I met with her in the office.
- 22 Q The termination letter said this was done after, "much
- 23 consideration."
- 24 A Definitely.
- 25 Q What consideration were you referring to?

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1 A We investigated and I considered the matter.

2 Q For how long did you consider it?

3 A I can't recollect an exact timeframe. The usual  
4 protocol is ask each of my program coordinators their  
5 thoughts on the matter as well.

6 Q You referred to Bonnie Minor's conduct as insubordinate,  
7 correct?

8 A I didn't refer to it, that's what you said.

9 Q I'm sorry. So that wasn't part of the reason for firing  
10 her?

11 A If the word is insubordinate, I believe Cathy added her  
12 word. That wasn't my term. Like I said, I said she was  
13 cruel.

14 Q You're the one who decided to have her fired, right?

15 A That's correct.

16 Q What were the reasons? Notwithstanding what the letter  
17 said, what were the reasons or the reason she was fired?

18 A There were several. One was the fact that she cancelled  
19 the party and I thought that was cruel. Two is the fact that  
20 when we were talking on the phone, she immediately hung the  
21 phone up and told the clients in the household that I was  
22 screaming and yelling at her, which is also cruel.

23 Q How do you know that she did that?

24 A I was contacted by one of the other employees, and then  
25 Bonnie admitted to it.

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1 Q Bonnie didn't admit she was --

2 A She admitted to me she did.

3 Q Did she admit that she said -- she told clients you were  
4 screaming and yelling at her --

5 A Yes.

6 Q -- or that your voice was raised?

7 A Both. She said that I was treating her like her father.

8 Q Tell me when did -- what was the "poor judgment," or was  
9 that a reason?

10 A Definitely.

11 Q What was the poor judgment?

12 A The poor judgment on her part?

13 Q Yes.

14 A Getting off the phone and for her own agenda, I don't  
15 know why, telling those clients that. It was mean.

16 Q I'm going to turn now and ask you some questions about  
17 Alicia Sale and Hannah Gates.

18 A Okay.

19 Q I think I can largely handle those together. If you get  
20 confused, feel free to let me know.

21 A Okay.

22 Q Was less consideration given to those terminations as  
23 well?

24 A Most definitely.

25 Q Who decided to terminate them?

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1 A Ultimately, it was my decision. Like I explained the  
2 protocol before, I bring the recommendation to my  
3 administrator/CEO and we talk about it.

4 Q Are you the one who generated the idea that they should  
5 be terminated?

6 A I think we all considered it. Like I said, I'm the one  
7 that actually wrote the letter and sent it upstairs to my  
8 administrator, so yes.

9 Q When you say we all, who are you referring to?

10 A I usually involve the other members of my management  
11 team.

12 Q In this case, who did you involve, if anyone, if you  
13 recall?

14 A I obviously involved Mieke, who is my program assistant.  
15 She runs the ITS program, so she's in charge of the program  
16 that those two women were working in. Definitely her. I most  
17 definitely talked to HR.

18 Q This centered around the elderly client who was wheelchair  
19 bound, correct?

20 A That's correct.

21 Q You got a call from Jessica --

22 A Lanzoratta.

23 Q Thank you. Notifying the office that there was an issue,  
24 a bruise and a scratch had been found on this elderly  
25 gentleman.

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1 A We call it injuries of unknown origin.

2 Q So you went out there that morning?

3 A That's correct. Actually, I didn't get the call from  
4 Jessica. My program coordinator, Mieke, got the call, said  
5 there's injuries on this client, let's go have a look.

6 Q So you went out?

7 A Yes.

8 Q You personally interviewed or spoke with the elderly  
9 gentleman?

10 A Definitely, yes.

11 Q Alicia Sale was with you when you interviewed him?

12 A She was within six or eight feet of me, yes.

13 Q She was in earshot, she could hear?

14 A As was Hannah.

15 Q You asked the -- you came to look at the injuries,  
16 correct?

17 A Yes.

18 Q Then you made an assessment about the wheelchair causing  
19 the injury, correct?

20 A Yes.

21 Q Was the bruise and the scratch in the very same place?

22 A The bruises were on the thigh, the scratch was about six  
23 inches above the bottom of his foot on his ankle. He also  
24 had some scrapes on his elbow.

25 Q Now, when you were there, you asked -- he mentioned he

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1 had a stomachache.

2 A He pointed to his stomach, yes.

3 Q Did you ask him if he wanted to go to the doctor?

4 A Yes.

5 Q What did he say?

6 A Yes.

7 Q Did he say that more than once to you?

8 A Several times, yes.

9 Q Now, you don't have any information that he asked to go  
10 to the doctor before you arrived, did you?

11 A Ms. Sale and Ms. Gates informed me that he'd been asking  
12 all morning.

13 Q They informed you that he'd been asking to go to the  
14 doctor all morning?

15 A That's correct.

16 Q They told you that they didn't have anybody there who  
17 was able under your protocol to transport him, correct?

18 A That's not correct.

19 Q What did they tell you?

20 A They said they don't have enough staff.

21 Q Enough staff or don't have staff?

22 A Don't have enough staff.

23 Q Was Alicia Sale or Hannah Gates, were either of them  
24 qualified under your protocol to drive this fellow to the  
25 doctor?

- 1 A No, definitely not.
- 2 Q Was there any other staff there?
- 3 A No, there's none in the house.
- 4 Q How many clients are in that --
- 5 A Three clients.
- 6 Q Which program is this?
- 7 A Intensive tenant support, all under the support of living
- 8 model.
- 9 Q So the intensive means they need 24-hour care. Is that
- 10 correct?
- 11 A That's correct, yes.
- 12 Q Is there a ratio that the state requires or wants where
- 13 you're supposed to have a certain number of staff to client
- 14 ratio?
- 15 A There's no set standard. It's up to health and safety,
- 16 and we usually come up with that ratio.
- 17 Q Have you come up with the ratio that you want for that
- 18 home, staff to clients?
- 19 A We're paid a certain amount of hours, and we have to
- 20 come up with that ratio within the hours that we're paid in
- 21 the house. Usually in a house like that, that would afford
- 22 one person 24 hours a day and then some overlap during the
- 23 day as well. Within those hours, we have to figure out when
- 24 that overlap is best utilized.
- 25 Q When is that for that house?

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1 A Different times of the day, sometimes during bathing,  
2 sometimes during feedings.

3 Q At that female house where Jessica was that morning, how  
4 many staff were there?

5 A I believe she was by herself that morning.

6 Q How many clients were there?

7 A I believe there's three clients in that home as well.

8 Q Is that also the ITS program?

9 A That's correct.

10 Q Alicia Sale, Hannah Gates, were either of those head of  
11 household?

12 A No, they were not. If I may, Jessica ran her household,  
13 which is a ladies' household, and she was also in charge of  
14 that household as well.

15 Q While you were at the elderly gentleman's home that  
16 morning, you were there, Mieke was there?

17 A Yes.

18 Q Hannah and Alicia?

19 A Yes.

20 Q Anybody else employed by KTSS?

21 A No.

22 Q Until Jessica arrived?

23 A Yes.

24 Q Were you still there when Jessica arrived?

25 A I was not.

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1 Q So a plan was formulated while you were there to get  
2 this fellow to the doctor.

3 A That's correct.

4 Q Were you involved with that or did you leave that to  
5 Mieke and Jessica?

6 A Mieke set it up at my direction.

7 Q What did you tell Mieke to do?

8 A I suggested that one of the ladies in the house go out  
9 to Jessica's house, relieve her, and have Jessica come back.

10 Q How far in terms of miles are those two homes apart?

11 A 10-12 minutes.

12 Q That's fine, that answer's good. The doctor -- I think  
13 you called it Prompt Care where you --

14 A I believe so, yes.

15 Q Is that something you set up or did Mieke?

16 A Mieke set that up, yes.

17 Q How far in terms of minutes is Prompt Care?

18 A Seven or eight minutes.

19 Q So this wasn't an emergency situation anyway, was it?

20 A We were concerned. They said he'd been complaining all  
21 morning, but I was concerned. He's an elderly man. My  
22 biggest concern was that they hadn't sought medical attention  
23 yet.

24 Q If you had declared this is an emergency, someone passed  
25 out or signs of cardiac arrest, or something like that, what

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1 do you do in that case?

2 A That would for sure be a 9-1-1 call. We do these 9-1-1s  
3 to transfer a lot of our clients to doctor's appointments  
4 because we don't have other options sometimes.

5 Q Other than your facility and 9-1-1, are there other means  
6 to transport somebody when it's somewhat time sensitive? Is  
7 there cabulances?

8 A We have cabulance in town as well.

9 Q Okay. Neither Alicia or Hannah told you they were going  
10 to ignore the gentleman's request to see a doctor, did they?

11 A They never told me they were going to ignore him.

12 Q They never told you they weren't going to tape up the  
13 wheelchair.

14 A No, they told me that they would.

15 Q The tape you wanted them to use, what kind of tape is  
16 that?

17 A I suggested they use medical tape or a band-aid.

18 Q Was that present in the home, do you know?

19 A When I came in the next day and did it myself, I found it  
20 in the home.

21 Q Did you leave the home with Mieke that morning?

22 A Yeah, we drove together.

23 Q Was there any instruction to Alicia -- Alicia was  
24 determined to be the one who was going to relieve Jessica,  
25 right?

1 A Okay.

2 Q Any reason Alicia rather than Hannah?

3 A I wasn't involved.

4 Q So you told people to get this fixed and you weren't  
5 involved in exact details of who was going where when?

6 A I stayed with Robert, I know him quite well.

7 Q Alicia didn't come back to that man's home again that  
8 week, correct, or do you know?

9 A I don't believe she did.

10 Q When she left to relieve Jessica, did she know she wasn't  
11 going to be coming back to that home that week?

12 A I believe so.

13 **(Long pause)**

14 Q How many homes or facilities does KTSS have in the Port  
15 Angeles area?

16 A Five.

17 Q That's been true for the last several years. Is that  
18 correct?

19 A We've combined some clients, to ask how many homes maybe  
20 isn't --

21 Q In the last two or three years, it's been consistent  
22 what you have?

23 A To go over a program from a long term administrator who  
24 died I think three years ago.

25 Q Since then, it's been the same?

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1 A That's correct.

2 Q How many facilities do you have?

3 A They're homes, but -- and we have one large one, which  
4 we consider two, so there's a single one and there's four  
5 others. There's five sites, if you will.

6 Q Five sites and one kind of double?

7 A One has two or three bedrooms and a duplex.

8 Q When I say how many homes that you have, KTSS doesn't  
9 own the homes?

10 A Correct.

11 Q It's the clients that they're renting or owning.

12 A Supportive living is based on clients living in their  
13 own homes.

14 Q Those five facilities, including the one in Port  
15 Angeles, how many clients are in each of those?

16 A It varies, some have three, some have four.

17 Q Three and four?

18 A Yes.

19 Q Okay.

20 A I'm sorry, actually there's no more than three now. We  
21 moved one out, so up to three.

22 Q You used to be up to four?

23 A Yeah, that's our general rule is about four.

24 Q You said you changed it down to three now. Is that a  
25 new rule?

1 A It's not a rule, it's just different situations come up,  
2 folks want to move, we get a new client and have to move some  
3 folks around.

4 Q How many staff are assigned to those five homes?

5 A There's between five and seven staff per home.

6 Q I'm going to ask you a question about Gary Martell here.

7 A Okay.

8 Q So you know where I'm coming from.

9 A Thank you.

10 Q Who pointed out to you alleged problems with his  
11 performance?

12 A I think it came up in a paperwork meeting, so it would've  
13 been my client resource specialists, Jamie and Molly.

14 Q Now I'm going to ask you about the Johnnie Driskell  
15 situation.

16 A Okay.

17 Q I think you met with her on July 23, 2012. I don't know  
18 if you remember that date or not.

19 A I've met with her many times over the years.

20 Q Do you remember meeting with her in mid-July and saying  
21 she wasn't taking her prior write-ups seriously?

22 A Yes.

23 Q What's the importance of a write-up?

24 A Hopefully to get some training from it. Hopefully they  
25 would take it seriously enough that they would make some

1   **(Long pause)**

2   Q    Lisa Hennings got reassigned from head of household to a  
3   lesser position up in Port Angeles, correct?

4   A    Yes, that's correct.

5   Q    She was sent to the home of her ex-husband, correct?

6   A    That is not correct. It's a home that he ran, but she --  
7   if I can explain how the layout is.

8   Q    Yes.

9   A    There's two buildings that are 20 feet apart. He runs  
10  both buildings, he mainly works out of one building and she  
11  would work out of the other building.

12  Q    You were aware of his role at the time she was  
13  reassigned?

14  A    Yes, definitely.

15  Q    Did Lisa tell you she would prefer not to work with him?

16  A    She said that wasn't the best place. She also told me  
17  that if that was the only place or if that was the best  
18  match, she would give it a go.

19  Q    Weren't there other shifts available?

20  A    There were none that were a match for her.

21  Q    What do you mean by not a match?

22  A    She didn't want the graveyard shift at that point. The  
23  other thing is, we consider client match always, so there's  
24  different places where her style works better.

25  **(Long pause)**

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1 Q Do you recall telling anybody in management that you'd  
2 be able to stall the union for years in negotiations?

3 A Absolutely not.

4 **(Long pause)**

5 MR. JENSEN: Nothing further.

6 JUDGE POLLACK: Mr. Fiol?

7 MR. FIOL: Yeah, I have a few questions.

8 **DIRECT EXAMINATION**

9 Q BY MR. FIOL: The few questions that I have deal with the  
10 subject of the Hale and Gates incident with the client on  
11 December 20th.

12 A Okay.

13 Q Of 2011. You testified to Mr. Jensen that you had seen  
14 this union flyer in mid-December, correct?

15 A That's correct.

16 Q Then this incident with Alicia Sale and Hannah Gates took  
17 place on December 20th.

18 A Yes.

19 Q On December 20th, the arrangement was that Jessica  
20 Lanzoratta would come over to the house.

21 A Yes.

22 Q They called it the ladies' house?

23 A She would leave the ladies' house and come to the guys'  
24 house.

25 Q I see.

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1 A She had a wheelchair van at that house. She's a driver of  
2 a wheelchair van.

3 Q That's really it, you worked it that way because she was  
4 the only one of the three that could drive?

5 A That van, yes.

6 Q Right, and drive the patient to the doctor that day?

7 A Correct, yes.

8 Q Alicia Sale and Hannah Gates were incapable of driving the  
9 patient?

10 A Correct.

11 Q I guess the schedule kept her there at the patient's  
12 house. Alicia Sale on the following day, December 21st,  
13 reported to the ladies' house.

14 A Okay.

15 Q Ms. Lanzoratta then took the patient to the doctor that  
16 day, correct?

17 A Yes.

18 Q Then she called the wheelchair -- the hardware store.

19 A Called medical.

20 Q Jessica then had someone come over and they looked at the  
21 wheelchair.

22 A Yes.

23 Q Made a judgment on padding.

24 A Yes.

25 Q And you went over to the house, correct?

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1 A That's correct.

2 Q You saw that and you were told that a technician came  
3 over.

4 A Yes.

5 Q Made that suggestion, you said fine. Then you put that  
6 tape around the sharp edge.

7 A That's correct.

8 Q Then you left.

9 A Yes.

10 Q Then everything was fine.

11 A On the wheelchair, yes.

12 Q That was the 21st or the 22nd? Do you remember?

13 A It was one of those two days.

14 MR. FIOL: I have nothing further.

15 MR. LOFLAND: We'll pick it up on my examination.

16 JUDGE POLLACK: Okay. Thank you, step down.

17 **(Witness excused)**

18 JUDGE POLLACK: We'll break until 12:30. Off the record.

19 **(Off record)**

20 JUDGE POLLACK: Mr. Jensen, does the union rest?

21 MR. JENSEN: Yes, sir.

22 JUDGE POLLACK: Okay. Your turn.

23 Whereupon,

24 **ALAN FREY**

25 was called as a witness, by and on behalf of the Respondent,

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1 and having previously been duly sworn, was examined and  
2 testified as follows:

3 **DIRECT EXAMINATION**

4 Q BY MR. LOFLAND: Mr. Frey, what is your current position  
5 with Kitsap Tenant Support Services?

6 A I'm a program manager.

7 Q How long have you held that position?

8 A Since '09.

9 Q What are your duties?

10 A I'm in charge of the day-to-day operations of the agency.  
11 I supervise the HR department, client resource, scheduling  
12 department, the quality assurance department. I do everything  
13 that involves client care.

14 Q Is your position one that you spend the majority of your  
15 day in the office?

16 A Just about half and half, sometimes doing what we call  
17 rounds, out visiting clients, meeting new client referrals.  
18 I'm a member of several of the treatment teams, so I'm doing a  
19 lot of treatment team work as well.

20 Q How long have you worked for Kitsap Tenant Support  
21 Services?

22 A Since 1992.

23 Q Can you tell us about the other positions you've held at  
24 Kitsap Tenant Support Services? Start with the earliest or  
25 first position and work your way forward.

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1 quarterly provider meeting.

2 I was also asked back when CP first started to help come  
3 up with a training curriculum for community protection. So I  
4 was on the committee there that puts together the original  
5 training.

6 Q Tell me a little bit about the history of KTSS. Do you  
7 know when it was formed or started?

8 A It started in 1972.

9 Q Who founded or started the organization?

10 A It was started by Michael Closser. He took over a group  
11 home on Bainbridge Island, which was later called Serenity  
12 Group Home. That was his first delve into social services with  
13 developmental disabled folks.

14 A couple of years later, he initiated some of the first  
15 contracts getting folks out of state institutions and having  
16 them come and live in their own homes. In the '80s, there was  
17 a switch. Folks were coming out of institutions. It was more  
18 in style for folks to live in their own homes, so in 1989, he  
19 started the ITS program. As I went through chronologically  
20 with my history, we've grown since then obviously.

21 Q Can you describe for me the business of KTSS, what does it  
22 do?

23 A KTSS side I work on is mainly providing residential  
24 support of living services for developmentally disabled adults,  
25 so folks over the age of 18.

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1 Q There are several divisions of KTSS?

2 A Correct.

3 Q What are they?

4 A On the KTSS side, there's the community protection  
5 program, there's the intensive tenant support program, and  
6 there's the supportive living light program. 30 years ago, it  
7 was ITS and supportive living, they called it. People use  
8 those words interchangeably. Now all of our services are  
9 considered supportive living, whether it's CP supportive  
10 living, supportive living light, or ITS supportive living. I  
11 forgot to mention we also run a homecare business as well.

12 Q Tell us what the homecare business does.

13 A Homecare is basically task-oriented services. We might  
14 have an elderly parent that needs an hour or two a day,  
15 somebody to come in and cook, clean, help them bathe, take  
16 them grocery shopping, take them to a doctor's appointment.  
17 The main difference between homecare and supportive living is  
18 homecare work is all task-oriented. Supportive living is  
19 facilitative for training.

20 Q In the homecare division, is there any requirements that  
21 the people who are served have developmental disabilities?

22 A There is not. It's a wide range of different -- it  
23 might be an elderly population, it can be an autistic kid, it  
24 could be a person in their 90s who's just not getting around  
25 as well as they used to.

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1 Q Let's talk about the tenant support. Tell us what  
2 intensive tenant support is.

3 A It's a 24-hour program where we have staff that works  
4 around the clock in shifts in client homes. These are folks  
5 that can't live on their own for physical reasons. You might  
6 have somebody who has cerebral palsy who can't walk, can't  
7 answer the phone, can't feed himself. We have folks on G  
8 tubes. We have a wide range of disabilities there.

9 We also have folks in that program who don't do well on  
10 their own. They might have diabetes. They may present as  
11 high level, but they have high need as far as medical needs.  
12 They're served 24 hours a day.

13 Q When they're served 24 hours, the graveyard shift, the  
14 people working during the nighttime hours, 12:00 a.m. to 6:00  
15 a.m., are they expected to be awake at all times?

16 A Yes, they are. We're one of the only agencies that  
17 requires that. A lot of the other folks have gone to a  
18 sleeping model. We don't contend that that's a safe enough  
19 model. We like to have our folks awake. If one of my very  
20 disabled folks had a seizure in the middle of the night, I'd  
21 like to have a person that was awake on shift to catch that.

22 Q There's also been talk about supportive living light.  
23 Tell us what that program is.

24 A Supportive living light was one of the original supportive  
25 living programs that came out in the '70s. They took folks

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1 that were in institutions that were higher level. Our DD  
2 population was placed in institutions because they didn't know  
3 what to do with them. They didn't have mental health issues,  
4 but they acted a little different, so let's put them all in an  
5 institution.

6 They realized these folks could live pretty well on their  
7 own with an hour or two a day of support. A lot of our folks  
8 for 30 years had .97 hours a day of support, for less than one  
9 hour a day. We have staff go out and make sure their house is  
10 kept up, they're going to doctor's appointments, their money  
11 was managed correctly, they were eating properly.

12 So that's -- and it's turned into supportive living  
13 light, although it's an official term, it's been an adopted  
14 term.

15 Q That's the way people at KTSS refer to it?

16 A And the way DSHS is now, they kind of adopted our term  
17 of supportive living light.

18 Q Supportive living light does not require 24-hour a day  
19 care?

20 A That is correct.

21 Q A short period of time each day?

22 A Correct. I might add that we originally started with 45  
23 supportive living light clients. Now we're down to 23 mostly  
24 because those clients, as they've aged in the last -- have  
25 switched into more intense services.

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1 Q Tell us about the community protection program.

2 A CP program started in the mid-'90s for folks that have  
3 been convicted of or have a history of some sort of violent  
4 crime. It could be fire starting. We have folks at level  
5 one, two, or three sex offenders. They're all with  
6 developmental disabilities.

7 What we found early on is a lot of our folks that we'd  
8 been serving for years from the '70s had these issues. So we  
9 were able to take some folks that were in supportive living  
10 light who had issues with children, move them into our CP  
11 program, and they were able to keep their homes.

12 Q Tell us about what services are provided and what  
13 happens in the CP program.

14 A The CP program is more of a therapy based program, so  
15 we're not -- our main focus in that program is not the  
16 medical need as it is in our other programs. Our main focus  
17 is community protection, so we're protecting our folks from  
18 the community.

19 Coincidentally, 95% of our folks have also been been  
20 abused by someone in their lives. We're also protecting them  
21 from some of the population. They're easy targets.

22 Q How is the community protection program structured?

23 A It's modeled after the ITS program. So we have a 24-  
24 hour awake staff model. The staff works three shifts a day.  
25 Sometimes we have one-on-one support. We have one-on-one,

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1 one-on-two, one-on-three. We serve no more than four clients  
2 with one staff. All of those ratios in the CP program is  
3 first talked about in the treatment team meeting, and then  
4 signed off by the therapist. The therapist will tell us what  
5 she feels is the proper rate of staff to client.

6 A normal day, the clients wake up. If they need help  
7 bathing, staff will help them with that, help cooking  
8 breakfast. It's more safety-minded. Our folks can usually  
9 cook a breakfast, but they might be somebody that might start  
10 a fire if they were left alone to cook their own breakfast.  
11 They might be somebody that can bathe themselves, but can't  
12 be around a razor blade because they might cut themselves  
13 with a razor blade.

14 We're doing a lot of modeling of behaviors. There are  
15 also folks who have mental health issues, many of them.  
16 Oppositional defiant disorders, they're ADHD, autistic, so  
17 they're -- many of them are very, very behaviorally  
18 challenged. Although we're going about our day providing the  
19 care, we're also doing a lot of modeling and mentoring.

20 Q Is entry into the community protection program by the  
21 client voluntary on their part?

22 A Yes, it's voluntary.

23 Q When they enter into the program, are there  
24 restrictions, such as line of sight, alarms?

25 A Right.

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1 Q Tell me about that.

2 A Originally there was -- we had to have an exception to  
3 policy for the five basic restrictions in community  
4 protection, that there's alarms on all doors and windows;  
5 that we can restrict those folks from certain populations of  
6 folks; we can do room searches if we want; and folks can't  
7 have drugs and alcohol; and we restrict certain media.

8 Back we had to ask for an exception for all those rules.  
9 About five or six years ago, they finally put them into WACS.  
10 So those are the normal restrictions that folks in CP have.  
11 So they have to live within those boundaries. If a person  
12 doesn't drink alcohol, they wouldn't need that restriction.

13 Q You said they put them into regulation. Who are they?

14 A It's all regulated by the State of Washington. I would  
15 get a referral packet from the State of Washington that would  
16 tell me that this person was a community protection client.

17 Q What are the purposes of the alarm?

18 A The alarms are so that if they have two staff are  
19 supervising three clients and one staff is helping one and  
20 the one staff is in the bathroom, the client can't sneak off.  
21 Our folks live in houses all around the community, as is what  
22 supportive living is supposed to look like. We'll be in a  
23 neighborhood. With the alarms on, we're sure that we know  
24 where our clients are all times.

25 Q If the client leaves the residence, what is the staff's

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1 obligation?

2 A The community is line of sight, so as far as anybody  
3 would be in the community. Unless the situation got tense, a  
4 child approached, then we would get any closer. In the  
5 community, about six feet away, with him at all times.

6 Q Tell me about the company structure or hierarchy.

7 A There's one owner, who's the administrator/CEO, Michael  
8 Closser. Underneath him is me, I'm the program manager. I'm  
9 in charge of all the other parts of this agency.

10 Underneath me, I have two quality assurance specialists.  
11 They do house checks, they check to make sure their  
12 medications are properly labeled. They are what they are.  
13 It's called quality assurance and that's their main duty.  
14 They also do activities, so their other role is they set up  
15 all the client trips and outings.

16 I have two young ladies right now who work in the client  
17 resource department, so they handle writing all the checks  
18 for the clients, paying their bills, making sure they can  
19 live within their means. We have another one of our program  
20 coordinators who signs the checks, and then I balance the  
21 books. We have three people involved in that to cross-check.

22 I have two women in HR. They're in charge of hiring,  
23 finding new staff, making sure the employment packets are  
24 correct, as far as having CPR/first aid.

25 I have program coordinators. I have one that runs the

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1 supportive living light program. I have a program  
2 coordinator who runs the ITS program.

3 I have a positive behavior support specialist. Her job  
4 is to write the positive behavior support plans and to help  
5 with any kind of behavioral intervention with clients. If a  
6 client is having a difficult time, I'll send her out to give  
7 the staff training on it, to help write the IR. She also  
8 does a lot with the clients and staff match. She'll go out  
9 to the house and see that there's an issue between client and  
10 staff or client to client. She'll report whether she  
11 believes in her experience that's a correct match in the  
12 house. That position is open right now.

13 I have two scheduling specialists. Their job is to  
14 schedule all the hours that we get. They come up with the  
15 staff hours in the house. I make sure the ratios are  
16 correct. They do all the work as far as somebody that calls  
17 in sick or needs time off.

18 Also, we have a CFO who does all the books in the  
19 company. She's a non-ISS staff. She's administrative staff  
20 only and she's in charge of payroll and doing all the  
21 business functions, paying insurance. I have a reception  
22 staff as well.

23 Q Who is the current supportive living light coordinator?

24 A Dawn Worthing.

25 Q Who is the ITS coordinator?

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1 A That's Mieke Gergely. The other open spot is a community  
2 protection program coordinator. We haven't hired that role.  
3 That was my role previously. We did not hire for that  
4 position, so I'm assuming both roles. Mieke assists me running  
5 the CP program, as does whoever we have in positive behavior  
6 support.

7 Q Have there been changes in that structure over the years?

8 A Most definitely.

9 Q Tell me about that please.

10 A When I started in '92, it was me, a program supervisor, an  
11 HR person, and a bookkeeper. We were about half the size  
12 client-wise. Because most of those clients were supportive  
13 living light, we had light hours. As time's gone on, we've  
14 taken on a more difficult to work with population, more  
15 mentally ill, more physically disabled, so our hours have  
16 increased tenfold since I started.

17 One person I forgot to mention, I also have a program  
18 coordinator in Port Angeles.

19 As we've started these programs, we've added people.

20 Q Let's talk about quality assurance people. Who are  
21 currently in quality assurance positions?

22 A Right now, I have Dan McNeil and Jeanelle Grace.

23 Q When you add the quality assurance program?

24 A When I started, that was basically my job from the get-  
25 go. I was that person. We called it weekend supervision.

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1 We figured out we could supervise from Monday through Friday  
2 because the office was open, but we had a tough time on the  
3 weekends when the office was closed. That was the original  
4 QA. I was given a house check form to use and I did the  
5 household checks.

6 I added QA probably mid-2010. We hired our first  
7 quality assurance person in the official title of that role.  
8 Before that, either I was either doing the house checks or  
9 one of my program coordinators was doing it. It was too  
10 much, I wanted a person that was just in charge of just doing  
11 house checks.

12 Q Why did you add the QA person?

13 A Residential Care Services took over DDD. When they took  
14 over DDD, there was more oversight. They were coming out to  
15 the house and having findings. They would ask for a safety  
16 plan. I found that the safety plan is to say that I was  
17 sending quality assurance to the house.

18 Interesting enough, I was at a provider meeting last  
19 week. All the providers in our region were there, so there  
20 was 150 people there from all over. The first question that  
21 DDD asked was how many folks have a quality assurance  
22 department. Only half a dozen of us raised our hand. Even  
23 though I know everybody's doing it, it's just we happen to  
24 have people that are officially titled as such. It lends a  
25 lot of credibility to say, this is this person's only job.

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1 Q You talked about Residential Care Services.

2 A Yes.

3 Q Is that an arm or division of the state?

4 A I think it was 2005 or so that DDD contacted us and said  
5 that they would be overtaken by RCS. It was going to be this  
6 relationship where everybody was going to mesh together. We  
7 found out later that RCS was more of a home care model, so  
8 they were very regulatory. They came in to regulate this  
9 industry more. They wanted to be more like a nursing care  
10 model where they have a survey once a year and they go  
11 through all the books.

12 It went towards a more regulatory model. RCS took over,  
13 that's when the CRU also started coming about, the complaint  
14 resolution unit.

15 Q And approximately what year or period did the CRU come  
16 into being?

17 A I think we saw our first CRU investigation '09, '10,  
18 somewhere around there. Before that, we would call adult  
19 protective services. If a client was abused, we would call  
20 APS. What the state found out is there was 4,000 calls a month  
21 and only 2% of them were being investigated. So they hired CRU  
22 investigators to start investigating more clients.

23 Q CRU is an administrative arm of the State of Washington?

24 A Yes, part of DSHS.

25 Q Tell us what CRU does.

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1 A Complaint resolution unit, they take the call from the  
2 mandated reported. If I thought somebody was being abused, I  
3 would make the call to CRU. They're the hotline number. Our  
4 staff also calls the same number. Anybody that's a mandated  
5 reporter that sees some kind of staff to client assaults,  
6 client to client assaults, they would call the CRU.

7 If it's a community member who assaults a client, that's  
8 still under adult protective services. CRU just does the in-  
9 house client and staff and the residential complaints.

10 Q You mentioned mandatory reporters. Tell us what a  
11 mandatory reporter is.

12 A Various folks in the healthcare field, doctors, nurses,  
13 folks taking care of folks have to report any kind of abuse,  
14 neglect, exploitation. If they don't, they could be held  
15 responsible.

16 Q Are you a mandatory reporter?

17 A I am, as is everybody who works in my agency, caregiver,  
18 administrative staff.

19 Q Is the reporting requirement limited to actual abuse,  
20 neglect and exploitation? Or does it also include suspected?

21 A Yes, the verbiage is suspected abuse or neglect. You  
22 don't have to see it. If you think it happened, if you heard  
23 that it happened, you make the phone call.

24 Q You as the mandatory reporter are required to make a  
25 report --

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1 A Right.

2 Q -- to the CRU if you have a suspicion that abuse, neglect  
3 or financial exploitation has taken place?

4 A That's correct. I call the hotline, I leave a message.  
5 They call me back. My other option is to send a fax. A lot of  
6 times, I'll just fax my incident report in.

7 Q Is that the same for staff members of KTSS who serve the  
8 developmentally disabled, are they mandatory reporters?

9 A That's correct. There's a green sheet in the house, which  
10 we have to post, we're required by WACS to post it with the 1-  
11 800 CRU number on it.

12 Q What happens if you, as a mandatory reporter, fail to make  
13 the mandated report?

14 A I could have a finding against me and I would never be  
15 able to work in this field again.

16 Q Tell us, if you would, about the number of employees in  
17 each of the divisions of the company. Tell us in tenant  
18 support approximately how many employees.

19 A In the ITS part, there's 25 houses, 5 people apiece, so  
20 around 100 to 130 people in that ITS program.

21 Q What about the community protection?

22 A Community protection, it is between 30 and 60 at anytime,  
23 depending on whether we gain clients or lose clients.

24 Q Does that number change in the past as you acquire to  
25 begin providing services in different programs?

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1 A Yes, as we took over the program in Port Angeles, there  
2 were six households, so we hired 30 staff immediately.

3 Q You talked about Port Townsend.

4 A Port Townsend, when we started, it was three separate  
5 households, so there was five staff for households. So  
6 initially, 15 staff in Port Townsend.

7 Q The numbers you gave that you presently have in each  
8 program, do they vary?

9 A They vary daily depending on -- I might have a client  
10 who would go into a locked facility for awhile because he's  
11 having a particularly tough time. So then I don't have those  
12 five staff anymore. If a client passes away, I don't have  
13 those five staff anymore.

14 As we're sitting here, I got a client referral to serve  
15 a new client, so I'm going to have to hire five new staff,  
16 open up a house and go from there. It changed since we've  
17 been here.

18 Q You talked about clients who had to be in locked  
19 facilities. Tell us what that --

20 A If a client is assaultive -- a lot of our folks don't  
21 meet the criteria for being able to be tried, so they -- we  
22 call the police if somebody gets assaulted. Instead of  
23 taking our client to jail, they take them to the hospital,  
24 the community mental health professional makes and  
25 assessment. They either send the client home with us if they

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1 think that they're safe to return home, or they might go to a  
2 diversion bed. They could be sent to Western State Hospital.  
3 They could be kept at one of the local mental health  
4 institutions for observation.

5 Q Tell us what Western State Hospital is.

6 A It's a state hospital for the mentally ill. They have  
7 400 clients there, so it's a locked facility for the most  
8 difficult of our mentally ill. I do get several referrals  
9 from Western State Hospital each year, folks that were doing  
10 better.

11 Q You were present yesterday Compe's testimony.

12 A Yes.

13 Q He was asked to describe the types of clients who are in  
14 the KTSS program. Do you remember that testimony?

15 A Yes.

16 Q Is that testimony accurate?

17 A Yes.

18 Q Do you have anything to add to that testimony?

19 A Not really. I think he did a good job with explaining  
20 our population.

21 Q Is it correct that your population has 18 or above?

22 A On the tenant support side, yes. Homecare can be under  
23 18.

24 Q Tell us how does KTSS get clients?

25 A I get a referral packet from DSHS. One of the

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1 supervisors or the case managers, they meet as a team.  
2 There's about 1,000 people on this waiting list that are  
3 looking for service. DSHS figures out who jumps to the top  
4 of this list, somebody who's in crisis, somebody who's making  
5 really bad choice and is at risk of being hurt, they'll go to  
6 that list. They'll give out referral packets to agencies  
7 where the person wants to live.

8 If the family lives in Bremerton, they might want to put  
9 them in Bremerton. They also ask the client where they'd  
10 like to live.

11 If it's CP, it's different. If they want to be in  
12 Kitsap County and they're community protection, and we're  
13 only certified vendor in Kitsap County, so we get all the CP  
14 referrals.

15 Long story short, I get about 100 pages in a packet.  
16 I'm asked to go out to review the packet, see if the person  
17 could be a good fit. If I think they might be a good fit or  
18 we have a room that's available, I'll meet with the client,  
19 meet with the family, take the guy out to lunch, show the  
20 family around, and see if it's a fit.

21 The other thing, when I go out there, I need to make  
22 sure that we have the staff that can work with that client.  
23 If a guy says, I want to go fishing seven days a week, that's  
24 my goal, I need to make sure I've got some fishermen. I make  
25 sure we can support the needs of the client.

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1           If it's a person who's on a G-tube, I need to make sure  
2   we have enough staff that are G-tube ready. If it's a person  
3   who gets insulin shots, I need to make sure that I've got a  
4   protocol in place for somebody to give insulin.

5   Q     When you say DSHS, you mean the Department of Social and  
6   Health Services, a division of the State of Washington?

7   A     I do, yes.

8   Q     When you say DDD, is that Division of Developmental  
9   Disability?

10   A     It is, and they've changed as of three weeks ago to  
11   Developmental Disabilities Administration.

12   Q     So DDD and DDA are the same, they are interchangeable?

13   A     We're all having problems changing that. I've been  
14   saying it for many years.

15   Q     To provide these services to clients who were referred  
16   by the Department of Social and Health Services, does Kitsap  
17   Tenant Support Services enter into contracts with the State  
18   of Washington?

19   A     Yes, we have two contracts with the State of Washington  
20   currently.

21   **(Long pause)**

22           MR. LOFLAND: Can you give me a couple minutes off?

23           JUDGE POLLACK: Off the record please.

24   **(Off record)**

25           JUDGE POLLACK: Back on the record.

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1 Q Mr. Frey, I've handed you what's been marked for  
2 identification as Employer Exhibit 13. I would ask you what  
3 that is.

4 **(Employer Exhibit 13 marked for identification)**

5 A It's a current client service contract with DSHS.

6 Q In the upper right hand corner of that is the contract  
7 number?

8 A There is.

9 Q I'll hand you that which has been marked for  
10 identification as Employer 14 and ask you what that is.

11 **(Employer Exhibit 14 marked for identification)**

12 A It mimics Employer 13, except it's our second contract.  
13 This is the Kitsap Tenant Support -- the Bremerton contract  
14 where the first one was the Port Angeles contract, two separate  
15 contracts.

16 MR. LOFLAND: Move for the introduction.

17 MR. FIOL: No objection.

18 JUDGE POLLACK: Employer 13 and 14 are received.

19 **(Respondent Exhibits 13 and 14 received into evidence)**

20 Q Mr. Frey, the clients who come to be referred to the  
21 program, both tenant support -- you talked about tenant support  
22 in particular. Is the participation program voluntary?

23 A Intensive tenant support, yes. All of our programs are  
24 voluntary.

25 Q May the client leave the program at anytime they want?

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1 A If they would like to, yes.

2 Q Do client services provide under those program?

3 A Yes.

4 Q How important is it to keep the client happy with the  
5 program?

6 A I guess it comes to -- for example, in the community  
7 protection program, if one of our folks says they don't want  
8 our services anymore, because they're community protection,  
9 DSHS gives them no services. We don't have any oversight on  
10 him anymore, he doesn't have somebody to manage his money once  
11 he switches his pay. He just walks down the street, no home,  
12 no job, the money that's in his pocket, and he could do  
13 something pretty horrible if left to his own devices.

14 He might be a fire starter, he might be a level defender,  
15 he might be somebody that makes really bad choices and could  
16 hurt a child or hurt a vulnerable person. He's also very  
17 exploitable himself.

18 Q When you use the term, level offender, what do you mean?

19 A We have folks that have been leveled by the criminal  
20 justice system as level one, two, or three offenders.

21 Q Those offenders refer to sexual activity?

22 A That's correct.

23 Q That's defined by statutes?

24 A That's correct.

25 Q I'd like to spend time talking about --

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1 A And we talked CP, but our other folks, supportive living  
2 light, is voluntary as well, as is our ITS program. Our folks  
3 in our ITS program, they can't walk on their own, they can't  
4 feed themselves on their own, so they're not voluntarily  
5 leaving the program.

6 Our supportive living light folks, because we get such  
7 limited hours, they're the most vulnerable. When I went to the  
8 quality assurance group, that's the concern. It's not our 24-  
9 hour program, even our CP program, just our light folks. We  
10 see them an hour or two or three a day, they have 20 hours on  
11 their own. That's where most of our concern is.

12 Q I'd like to ask you some questions about how the resources  
13 that go these contracts. First of all, where are the funds  
14 originally allocated?

15 A They're all state funds appropriated by legislature.

16 Q When legislature makes an appropriation for a certain  
17 amount of funds --

18 A To the DDA. They'll give DDA a certain pot of money to  
19 use for supportive living programs.

20 Q What does DDA do?

21 A DDA contracts with agencies like ours for the client  
22 support. They have to allocate the money where it's needed.

23 Q Who determines what the reimbursement is to companies like  
24 KTSS?

25 A There's a standard benchmark rate that all agencies like

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1 ours get. In the metropolitan area, it's \$15.18 an hour. In  
2 the non-metropolitan area, it's \$14.87. In our Bremerton  
3 program, it's \$15.18, and our Port Angeles is \$14.87 an hour.

4 Q Who sets that rate?

5 A The DSHS sets that standard contracted rate.

6 Q When you work with DDA, do you have the ability to  
7 negotiate or bargain with DDA about that rate?

8 A That rate can't change, no. Years back, we negotiated  
9 for clients when I first started.

10 Q It's not subject to negotiations with you saying, I want  
11 \$18 an hour reimbursement rate. It's just the \$15 --

12 A We get what we get.

13 Q Is that rate going to vary by location?

14 A The only difference is whether it's metropolitan or non-  
15 metropolitan. You either get the higher rate of \$15.18 or  
16 the lower rate of \$14.87. There's no other variances.

17 Q Of the pay that DSHS gives to organizations like KTSS,  
18 there's two components to that pay.

19 A Correct.

20 Q Tell us how does DSHS identify that?

21 A There's an ISS component, instructional staff support.  
22 That's the rate they give us to pay our staff with, just --  
23 anybody who does direct contact with clients, whether it's  
24 managing their money or bathing them, whether it's providing  
25 the scheduling to get them on outings. That's all ISS.

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1        They also -- and that's at the \$15.18 an hour. We also  
2        get an admin rate. There's an algorithm that they've come up  
3        with over the years that we get a percentage just based on the  
4        amount of hours you get for that client every day. If you get  
5        eight hours for a client, you get a certain admin rate. If  
6        you've got 18 hours a day, you get another admin rate. Again,  
7        there's no negotiations there either.

8        Q     Has that benchmark rates, particularly ISS rates, has that  
9        changed in past years?

10      A     When I first started in the early '90s, there was an  
11      increase. There's usually a cost of living increase every two  
12      years. So we do a two-year contract. Every two years, you'd  
13      get 1, 2, 4, 6%, something like that. Around '98, 2000, it  
14      started getting to be where you were fighting to get anything.  
15      The cost of living went away. It wasn't the norm anymore.  
16      Every other year, we get 2% for cost of living.

17            Five years ago, we took a 46-cent drop in pay. That was  
18      two contracts ago. The last contract, we took a 15-cent hit in  
19      pay. They lessened the amount. Now we're fighting just to get  
20      no decreases.

21      Q     What is the current pay rate for Kitsap Tenant Support  
22      Services' direct service staff?

23      A     They start at \$10.09 an hour. That's for a DSS.

24      Q     DSS is --

25      A     Direct service staff, that's correct.

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1 Q What is head of household's pay?

2 A They're paid \$12.09.

3 Q What about community protection?

4 A Paid the same.

5 Q How does that rate compare to other providers in the area?

6 A I checked about six months ago. We were the highest  
7 paying provider in our local competitor. In Port Angeles, I  
8 think our nearest competitor was about \$1 less. I always call  
9 and say, hey, what are you paying. That's really how I do it,  
10 are you hiring right now. You ask, what are you paying. At  
11 that time, they had no medical benefits at all. We only have  
12 one competitor on the Olympic Peninsula.

13 In Bremerton, we have two local competitors. One is 60  
14 cents less than ours with no medical. The other one is 70  
15 cents less than ours. They provide medical or no dental or  
16 vision. I looked in a lot groups in the Seattle region and the  
17 Tacoma region, Everett. Most folks have crept up to about \$10  
18 an hour now.

19 Q We talked a little bit earlier about the process DSHS  
20 makes in a referral. When they get down to whether they're  
21 going to accept the client, do they talk about the number of  
22 hours of service that are going to be provided?

23 A Of course. When I first started, we would get a new  
24 client. We would negotiate for the amount of hours we would  
25 get. They would say, Here's Joe Blow, here's their packet, go

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1 meet them. I would meet them and I would say, I need 20 hours  
2 a day for this guy. They would say, Okay, 20 hours a day at  
3 the benchmark rate. That was how it went. It was quite easy.  
4 I could have three people in a house and I could be getting 15  
5 hours each for them. So I might have 45 hours a day in a  
6 house. At that point, 45 hours a day pays for two fulltime  
7 staff 24 hours a day.

8 In about '05, '06, this new plan of care model came out.  
9 Basically, the case manager comes out to the house, opens up  
10 his laptop, and they ask a series of 96 questions on a support  
11 intensity scale. Do they need help bathing? Yes, they need  
12 help bathing. How many hours a day do they need help bathing?  
13 I'll score it, I'll say they need one hour a day. Then they  
14 say, How many days a week is that? I'll score that.

15 Long story short, I go through 96 questions and we score  
16 each one. At the end of that, that computer figures out the  
17 amount of hours. We go through mental health, dietary,  
18 medical. End of the day, the computer spits out how many hours  
19 we get a day.

20 What we found when we first negotiated our first contract  
21 with the new plan of care system compared to the old system,  
22 people were getting about 40% less hours. In one house, I  
23 might have 45 hours day for three clients, now all of a sudden  
24 they were giving me 26 hours a day for the same three clients.  
25 I would have one staff 24 hours a day, and then I'd have a two-

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1 hour overlap instead of having two staff all day long. It very  
2 much changed the way we did business.

3 Q Is there a method by which you can increase hours?

4 A You'd have to prove a medical or behavioral need for  
5 increased hours. I'll ask for an emergency provision for extra  
6 hours. They'll give me 90 days at a time a couple of extra  
7 hours a day. I've got to prove why I need it.

8 We can always go back and do a new plan of care. If I  
9 think somebody's needs have changed, someone is diagnosed with  
10 diabetes, kidney failure, we can do another plan of care. What  
11 I found was, the algorithm in the computer is set -- I can say  
12 a guy needs insulin shots ten times a week, and I just get this  
13 tiny little bit. It only represents a little bit. I might get  
14 ten minutes a day extra times seven days a week for it. At the  
15 end of the week, I've got \$16 extra for a guy who is now  
16 insulin dependent.

17 Q The benchmark for the reimbursement rate, I assume it's  
18 the fees for services contract?

19 A That's correct.

20 Q Do departments pay you or reimburse you for overtime?

21 A No, we get the hours for the client. If Joe Blow gets ten  
22 hours a day, we get ten hours a day times \$14.87 an hour,  
23 whether it's overtime or staff are on vacation, we have to make  
24 it work within that. That also includes all the training we do  
25 for the staff. If I hire new staff and I need to put them

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1 through 75 hours of training, that's going to come out of the  
2 hours that we get in the pot of money. It behooves me to keep  
3 staff around so I don't have to keep training new people at 75  
4 hours at a time.

5 Q In this contract that you have and reimbursements, does  
6 the department reimburse you a mileage rate?

7 A I wish they did. They don't. That's a negotiated rate.  
8 When we -- I do the plan of care at the house. Then the case  
9 worker's boss calls me up and says, The computer says you get  
10 12 hours a day. Then we talk about who the client matches are,  
11 and then she says, Well, it's 12 hours a day. Then we figure  
12 out how many hours those people can share together.

13 If I can supervise two people during lunchtime, then  
14 they'll slightly diminish each of their hours or one of their  
15 hours. I only get paid the hours for that one person. At the  
16 same time, we do the mileage calculation, so if client Joe  
17 Blow, they need to go to the doctor, how often, once a week.  
18 They go to work three times a week, they go to school five  
19 times a week. They ask me how many miles on the client's  
20 behalf are driven.

21 Once I tell them the amount of miles, their computer spits  
22 out an algorithm and gives me a daily rate, usually between \$1  
23 a day and \$4 a day.

24 Q That reimburses you for mileage regardless of the actual  
25 number of miles that are --

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1 A That's correct. We do not bill for the mileage  
2 afterwards. I go with my best case scenario, and if we happen  
3 to go over the miles, we're out of luck. I can go back and  
4 negotiate that. It's pretty tough because they want me to talk  
5 about a year's time, which is difficult for me to try to figure  
6 out what we're going to do in the next year. I have to rely on  
7 the experience from the year before.

8 Q Would you say this industry you're in, would you say it's  
9 a highly regulated industry?

10 A Yes, and becoming more and more so each year that I work  
11 in the industry.

12 Q One of the things that regulates what you do includes the  
13 contracts we previously looked at and admitted?

14 A Yes, there's policies in there we have to follow.

15 Q I will next hand you that which has been marked as  
16 Employer's Exhibit 15 for identification. Are those copies of  
17 the policies that apply to you?

18 **(Employer Exhibit 15 marked for identification)**

19 A They are.

20 Q Okay.

21 MR. LOFLAND: I would move for the introduction.

22 **(Long pause)**

23 JUDGE POLLACK: Let me know when you're ready.

24 **(Long pause)**

25 MR. LOFLAND: I moved for the introduction into evidence

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1 Q What is an SIS?

2 A That's the support intensity scale. Some people actually  
3 call that plan of care meeting an SIS or an assessment. SIS is  
4 the scale that's used in the assessment, the algorithm that I  
5 was talking about.

6 MR. JENSEN: What is SIS?

7 WITNESS: Support intensity scale.

8 Q Tell me what goals are.

9 A The goals are what's generated from the plan of care. In  
10 that plan of care, it might say that a person is overweight, so  
11 one of the goals might be to eat healthier. The plan of care  
12 might identify the person that has behavioral issues, so one of  
13 the goals might be to decrease the behavioral issues. The  
14 sky's the limit on folks' goals as long as they're achievable.

15 I also have to say, some of the folks' goals, a person  
16 who's very, very disabled, their goal might be to wash their  
17 face. We might spend ten years just getting them to put the  
18 washcloth in their hand. We're working towards the goal. At  
19 the end of ten years, they might be able to pick the washcloth  
20 up and put it in their hand.

21 Throughout the year, we do narratives showing that we're  
22 making progress towards that goal. So if a guy wants to go to  
23 New York and so you spend the year talking about going to New  
24 York, where do you want to go, how are we going to get there.  
25 If it's a food goal, you might do narratives on this is what we

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1 ate today. We write the progress towards that goal.

2 I can also say throughout the years, what's in those  
3 narratives have changed as far as what we're evaluated on.

4 There was a time where it was mostly a checklist. Then it  
5 became more in style to write narratives about things. They  
6 wanted short blurbs about things.

7 Q Why is it important to do narratives?

8 A If you'd never been to our program before and you wanted  
9 to see what my progress was, that would be the best way for  
10 you to see what progress we're making. It's the proof of  
11 what we do. If the CRU comes in to investigate and they  
12 think a staff is acting disrespectful, they'll go through the  
13 narrative and see how the conversation was going in there.  
14 It's a quick snapshot of what's going on in there. It's  
15 helpful to me to see interaction.

16 Q Are often are narratives supposed to be done?

17 A Our manual says weekly. My rule is if something great  
18 happens in regards to a goal, write the darn thing down.

19 Q Once a client comes into your program at KTSS through  
20 the referral process, like DSHS, how do you assign a staff  
21 member to clients?

22 A For example, I got a new gentleman last week who's  
23 coming into our program from Tacoma. I went through his  
24 behavior support plan, his psycho-sexual plan. I need to  
25 figure out what the guy likes. He likes to bowl, he likes

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1 JUDGE POLLACK: What about office --

2 WITNESS: Office staff as well.

3 JUDGE POLLACK: All right.

4 MR. JENSEN: Do we know whether -- this includes CP then?

5 WITNESS: Um hum. [Yes]

6 MR. JENSEN: Do we know how many terminations were --

7 JUDGE POLLACK: Why don't you save that for cross-  
8 examination?

9 MR. JENSEN: Okay. Your Honor, if I may, if he doesn't  
10 know that, I don't think the document can come in.

11 JUDGE POLLACK: If you want to do it on voir dire, go  
12 ahead.

13 MR. JENSEN: Thank you.

14 **VOIR DIRE**

15 Q BY MR. JENSEN: Mr. Frey, on this Employer 22, do you know  
16 what number of these terminations came out of CT?

17 A I don't.

18 MR. JENSEN: I object, Your Honor. It has no logical  
19 basis.

20 JUDGE POLLACK: I think it goes to the weight. I'll  
21 receive it.

22 **CONTINUED DIRECT EXAMINATION**

23 Q BY MR. LOFLAND: Mr. Frey, when did you first learn of  
24 union activity and union presence at Kitsap Tenant Support  
25 Services?

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1 A My program manager that runs the homecare program alerted  
2 me in November sometime that he was informed that some of her  
3 homecare staff were approached by some of our supportive living  
4 staff. She calls it her side/our side. I don't know who, how  
5 many. I thought it was -- we've had the SEIU come in years ago  
6 and I knew they were mobilizing all the independent providers,  
7 so I thought it was the SEIU.

8 Q By that, you mean SEIU has been trying to organize or have  
9 organized homecare providers?

10 A Yes, they've been organizing independent providers, the  
11 homecare providers. We had experienced from them with a  
12 campaign about ten years ago.

13 Q That was in the homecare?

14 A Yes.

15 Q In response to that, what did you do?

16 A I talked to my administrator. He suggested I contact you  
17 about it as a labor attorney. We started talking about it at  
18 that point.

19 Q In earlier questioning by Mr. Jensen and Mr. Fiol, you  
20 were asked about a union flyer.

21 A Yes.

22 Q Do you recall when it is that you first saw the union  
23 flyer?

24 A I think from the middle of December to the end of  
25 December. I don't have an exact date.

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1 Q Now I will hand you that which has been marked as  
2 Employer's Exhibit 23.

3 **(Employer Exhibit 23 marked for identification)**

4 MR. JENSEN: No objection here.

5 Q I'll ask you what that is.

6 A That's the flyer I received between the 15th and 20th of  
7 December.

8 Q How did it come to your attention?

9 A I believe somebody dropped it off at our front counter.

10 Q Do you know who?

11 A I don't know.

12 Q The original document, was it in black and white or in  
13 color?

14 A It seems like I saw a color copy of it.

15 MR. LOFLAND: Move for the admission of Employer's 23.

16 MR. JENSEN: No objection.

17 MR. FIOL: No objection.

18 JUDGE POLLACK: Employer's 23 is received.

19 **(Employer Exhibit 23 received into evidence)**

20 Q The document pertains to names of employees. Is that  
21 correct?

22 A Yes, there's a list of names.

23 Q Circle the names and draw a line to the picture of the  
24 person whose name is.

25 A I need a pen.

1     **(Long pause)**

2           MR. LOFLAND: Can we go off the record for a minute  
3 please?

4           JUDGE POLLACK: Off the record please.

5     **(Off record)**

6           JUDGE POLLACK: Employer's 23 has the circling of the  
7 names and connecting to the pictures.

8           MR. LOFLAND: I move to substitute that for the previous  
9 exhibit.

10          JUDGE POLLACK: All right, that's done. Employer's 23 is  
11 received.

12          MR. FIOL: Could I get clarification? At the bottom,  
13 right in the middle, there's a line to one person and I can't  
14 read the magic marker --

15          WITNESS: Ally Sale.

16          MR. FIOL: Is that the same as Alicia?

17          WITNESS: Yeah. There's a name at top, Amanda Matus.  
18 It's not circled because she's not on here. I'm guessing that  
19 was supposed to be Alicia Sale.

20          JUDGE POLLACK: All right.

21     **(Long pause)**

22   Q     BY MR. LOFLAND: Mr. Frey, the union has alleged that you  
23 have targeted people who support the union, the people on the  
24 flyer.

25   A     Yes.

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1 Q Have you done that?

2 A No, I have not.

3 Q I'd like you to take a look at Exhibit 23 and the pictures  
4 on it. If you could start at the upper left hand corner and  
5 move clockwise, the person on the upper left hand corner, whose  
6 picture is that?

7 A That's Lisa Hennings-Lucas.

8 Q Is Ms. Hennings-Lucas still employees by KTSS?

9 A She is.

10 Q Has Ms. Hennings-Lucas suffered any demotion?

11 A She's been demoted from head of household to a direct  
12 service.

13 Q We'll deal with that later. The next picture to the right  
14 is who?

15 A Angie Chapman.

16 Q Is she still employed by KTSS?

17 A She is.

18 Q What position is she?

19 A She's head of household.

20 Q At the time you received this flyer, was Ms. Chapman a  
21 head of household?

22 A She's been head of household for a long time, yes.

23 Q The next person to the right is a man.

24 A Al Quadroche.

25 Q Mr. Quadroche has also been on the negotiating committee?

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- 1 A I'm sorry, he's not, he's retired.
- 2 Q Mr. Hopkins is retired?
- 3 A Yes, he's retired.
- 4 Q The next person in the right hand corner?
- 5 A Jessica Buck.
- 6 Q Is Ms. Buck still employed?
- 7 A She's still with us. She's not working any hours right
- 8 now at her choice. We've given her some choices of houses to
- 9 work in.
- 10 Q She's not available for the houses?
- 11 A Correct.
- 12 Q The one below Ms. Buck?
- 13 A I believe it's Bonnie Minor.
- 14 Q Is Bonnie Minor and another person a twin?
- 15 A That's correct. Barbara Mitchell is her twin.
- 16 Q Is Bonnie still employed with KTSS?
- 17 A Bonnie is not employed with us.
- 18 Q Is she terminated?
- 19 A Yes, she was terminated.
- 20 Q The next person below Bonnie, who is that?
- 21 A Lenora Jones.
- 22 Q Is Ms. Jones still employed by KTSS?
- 23 A She is not.
- 24 Q Why is she no longer employed?
- 25 A She quit several weeks back.

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1 it.

2 A That's correct.

3 Q Let's start with the person on the right, who is that?

4 A That is Alyssa Olander.

5 Q Is she employed by KTSS?

6 A She is not.

7 Q Why is she no longer employed?

8 A She quit. If I could add a little bit to that please?

9 Q Sure.

10 A When this flyer came out, she was head of household of

11 one household. I promoted her to running two households.

12 About two months ago, she called. She put in her notice and

13 said she was going to leave in three weeks. Then out of the

14 blue, she called at 2:00 in the morning under the influence

15 of something and quit.

16 Q The one to the left of Alyssa Olander, who is that?

17 A That's Alicia Sale.

18 Q Ms. Sale is no longer employed?

19 A She is not, she was terminated.

20 Q The person to the left, who is that?

21 A Jessica Lanzoratta.

22 Q Is Ms. Lanzoratta still employed?

23 A She is not. Her husband was transferred and she moved out

24 of state.

25 Q The person to the left of that picture?

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- 1 A Terry Owens.
- 2 Q Is he employed?
- 3 A He is not employed, he was terminated.
- 4 Q The picture to the lower left of that, who is that?
- 5 A Hannah Gates.
- 6 Q Is she employed?
- 7 A She was terminated. She's not employed.
- 8 Q In the listing of names, it appears on Employer Exhibit
- 9 23, is the name Amanda Matus. That's not circled.
- 10 A Correct.
- 11 Q Is that because her picture does not appear in the flyer?
- 12 A I do not see it on the flyer.
- 13 Q Is that person still employed by KTSS?
- 14 A I don't believe so, but I don't know the circumstances.
- 15 I'm not familiar with it.
- 16 Q Do you know whether she was fired?
- 17 A I don't believe so.
- 18 Q The person directly above the lower left hand corner, who
- 19 is that?
- 20 A That's Augusta Soreano.
- 21 Q Is he still employed by KTSS?
- 22 A He is, he works in my CP program.
- 23 Q Has there been any demotions to him?
- 24 A I believe he had one written warning for a narrative, but
- 25 nothing else.

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BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,  
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party

Cases: 19-CA-74715  
19-CA-79006  
19-CA-82869  
19-CA-86006  
19-CA-88935  
19-CA-88938  
19-CA-90108  
19-CA-96118  
19-CA-99659

The above-entitled matter came on for hearing pursuant to Notice, before **JAY R. POLLACK, Administrative Law Judge**, at the National Labor Relations Board - Region 19, Jackson Federal Building, at 915 Second Avenue, in Seattle, Washington, on Thursday, September 19th, 2013, at 9:06 a.m.

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1 A Uh-huh.

2 Q Can you describe them for us, please?

3 A Yeah, he is 84, severe cerebral palsy. He can't walk. He  
4 has been wheelchair-bound since I have known him, which is more  
5 than twenty years. He can't use his arms; his arms are cocked  
6 in front of his chest so that he can't -- he can barely pick up  
7 a cup. He stutters --

8 Q I'm sorry, when you were describing his arms were in front  
9 of his chest, you had your arms up --

10 A They are stuck.

11 Q -- held against your chest in an "x" or together pattern.

12 A Yeah, his joints have become fused over the years. They  
13 were fifteen percent fused when I met him twenty years ago.  
14 His elbows don't move much. You can't even straighten them on  
15 your own. His wrists don't move, his fingers barely move.

16 His -- he does have movement in his feet. He can shuffle  
17 his feet a bit. In old times, he would be able to move around  
18 the house in his wheelchair without the footrests on. Now, he  
19 still doesn't want the footrests on because he remembers the  
20 old days, but his feet just rest on the floor.

21 He has a tough time admitting that he is not sixty years  
22 old anymore, like he still tells everybody.

23 Q And is he able to move or ambulate on his own?

24 A Not at all on his own. He -- if he is placed from his  
25 bed, we do what is called a partial transfer, so you -- you

1 behavior, and the Employer's motive for discharging him.

2 But we have to understand the circumstances and the client  
3 abilities or disabilities, seem to me to be relevant to that  
4 issue.

5 I will receive Employer's Exhibit No. 45. Is it 45?

6 THE COURT REPORTER: Yes.

7 JUDGE POLLACK: All right, Employer's Exhibit No. 45 is  
8 received.

9 **(Employer's Exhibit No. 45, received into evidence.)**

10 Q BY MR. LOFLAND: Mr. Frey, when you arrived at the  
11 client's house or the client's household, tell me what you  
12 found.

13 A It seemed to be the normal morning. The one client with  
14 the bedsores was in his bed. He appeared to be positioned  
15 correctly. As I walked in the hall, I could see him. I could  
16 see -- Client R's room is right next to the bathroom, and the  
17 door -- you can stare out of one room and see into the  
18 bathroom.

19 So, Ms. Gates was in there assisting a client to use the  
20 toilet, one of the other clients in the house, and then Ms.  
21 Sale just greeted me when I came in. But it seemed like the  
22 norm when I came in, but it seemed like the norm.

23 *[Long pause]*

24 Q And as to Client R, where -- where did you find him?

25 A He was in his room, in his bed, partially clothed. He was

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1 wearing Attends, adult-style diaper, and then he was covered  
2 with a sheet.

3 Q Did you then examine Client R?

4 A Yeah, I greeted him, like I normally would. I asked him  
5 how it was going, and he shook his head from left to right,  
6 which meant that things weren't going very good. I asked him  
7 if I could pull down the sheet and have a look at his bruises,  
8 and he shook his head "yes," so I went through and started the  
9 assessment of where these bruises of unknown origin came from.  
10 I started asking him questions about -- "Do you remember when,"  
11 "Did you see this? Do you remember when it happened?" "Did  
12 you hit yourself," you know, going through my normal list, and  
13 during that conversation, he was hitting his elbow on his  
14 stomach because his elbows are in front of him, and stuttering,  
15 "My belly hurts," which means his belly hurts.

16 So, I started kind of -- you know, after you hear that,  
17 you start asking questions, "How long has it hurt," "Does it  
18 really hurt on the scale of one to ten?" With Client R, I will  
19 say, "Is it a really bad one?" How we knew it was a really bad  
20 one, is the guy loves pie, so I just said, "Hey, how about I go  
21 get you a piece of pie?" He shook his head "no," so he didn't  
22 want anything to do with pie, so something wasn't going on with  
23 the guy. He eats pie ten times a day if he could.

24 Q And when you looked at his extremities --

25 A Uh-huh.

1 A That is the scratch that I noticed, yes.

2 MR. LOFLAND: Just for the record, Judge, the two pages,  
3 the second and third pages which show the scratch are the same,  
4 but the last page is a little clearer.

5 Counsel -- Mr. Fiol, simply allowed me to staple the  
6 clearer picture on the back, but it is not meant to be two  
7 different pictures.

8 Is that correct, Mr. Fiol?

9 MR. FIOL: Correct.

10 JUDGE POLLACK: Okay.

11 Q BY MR. LOFLAND: And that truly and accurately is a  
12 depiction of the scratch you saw on the 28th of December?

13 A I took the picture, yes.

14 JUDGE POLLACK: When did you take the picture?

15 THE WITNESS: I took it the next day when I came back out  
16 again.

17 JUDGE POLLACK: Okay.

18 Q BY MR. LOFLAND: So when you finished physically examining  
19 the client --

20 A Yes.

21 Q -- what did you then do?

22 A Umm, so we figured out -- I talked to Mieke who was then  
23 with me. We figured out the bruises on his leg likely came  
24 from the -- the arm of his wheelchair when they would transfer  
25 him from the chair to the bed, and that is already padded, so I

1 am guessing -- somebody might have been a little bit rough with  
2 him, you know, so maybe he moved, maybe he wiggled, who knows,  
3 but he hit his leg on there, but it didn't seem like anything  
4 unusual. It wasn't in an odd area, you know.

5 These injuries of unknown origin, if they are in a normal  
6 area, then it is -- then we can assess that stuff. If it was  
7 in his groin or somewhere of concern, or his buttocks, then  
8 obviously it is a different thing.

9 But -- so then we -- we noticed the scratch on the leg and  
10 I started looking around, and I asked him where it had come  
11 from and he didn't know. So, then immediately I started  
12 looking in the bed. I went in the bathroom and looked to see  
13 if maybe there was something in the shower that could have hurt  
14 him. He has got a shower chair that he sits in, so I am  
15 looking for sharp points, because it doesn't make much sense.  
16 Client R -- he always wears big combat boots, kind of boots,  
17 and I think in the picture it shows the boots, and a sock, so  
18 -- and I figured it must have happened sometime, so I figured  
19 it happened in bathing.

20 But, so, I finally looked at the chair again. I -- and I  
21 took the measurement. I saw the sharp edges down below, and if  
22 you will notice in the picture, most wheelchairs have the  
23 footrest, and Client R -- he liked to have his footrests swung  
24 out to the side so that he could scoot around with his feet,  
25 even though it wasn't the best out in the community, because he

1 could get his foot caught underneath, so in the house, he would  
2 scoot around, and so I -- I asked him if I could sit in the  
3 chair as -- we have to ask, you know. It is respectful -- it  
4 is disrespectful just to sit in somebody's chair.

5 So, he said, "Yeah, sure." I sat in the chair and I saw  
6 where those points were hitting. I took a piece of paper and I  
7 put -- I kind of used it as a tape measure and measured it, and  
8 put it against Client R's leg, and deemed that that was likely  
9 where it came from.

10 Q All right, and looking at the first page of Employer's  
11 Exhibit No. 46, for identification, is that a photograph of his  
12 wheelchair?

13 A It is, yes.

14 Q And at the time you looked at it, the picture seems to  
15 have tape over the corners --

16 A Yes.

17 Q At the time you first arrived and examined the chair, did  
18 it have that tape?

19 A It did not.

20 Q And was that the area that you determined was sharp and  
21 causing the problem?

22 A That's correct, and there was an area just like this on  
23 both sides of the chair.

24 Q So, what did you do when you determined that there -- that  
25 the wheelchair was causing the -- was likely to cause the

1 scratch?

2 A Well, I didn't do anything at that moment. We were still  
3 concerned that Robert was laying in his bed and he was still  
4 concerned about the bellyaches, and that is when I asked -- I  
5 asked him again, "Is your belly hurting," and we went through  
6 that whole thing, and he was pointing, stuttering, "Belly,  
7 b-b-belly" and he says, "Doctor, d-d-doctor," and I said,  
8 "Okay, you want to go to the doctor?" "Yes, I want to go to  
9 the doctor."

10 This is not usual for this client or a lot of our clients  
11 because who is an 84-year-old guy in an Attends in your bed  
12 wants to go to the doctor? You know, it is not fun -- you have  
13 got to transfer him, you have -- he has got to get dressed, he  
14 has got to leave the house. He doesn't particularly like  
15 leaving the house, and then go get poked and prodded at a  
16 doctor's office. So, I knew something wasn't right.

17 He didn't want pie because his belly really hurt, and  
18 about that time, I -- Ms. Sale piped up and said, "Yeah, he has  
19 been asking to go to the doctor all morning. And, Ms. Gates --  
20 like I said, the doors are right -- were close to each other,  
21 and she chimed in and said, "Yeah, he has been asking all  
22 morning."

23 I said, 'Client R,' "have you been asking all morning?"

24 "Yes."

25 So -- and so we just considered our dialogue and I finally

1 said -- you know, and then Ms. Sale, I believe, said, "You know  
2 he always is complaining about going to the doctor."

3 And I said, "Well, why haven't you taken him?"

4 That is when she said, "We don't have enough staff."

5 I have got to tell you, I wasn't particularly happy. I --  
6 I am not a voice raiser so I didn't raise my voice, but I think  
7 she could tell that I wasn't too pleased. And then I said, "So  
8 here we have a guy who is laying in his bed, he can't use the  
9 phone, he can't go to the doctor, he is asking to go to the  
10 doctor," and I am asking, "Well, why didn't you take him?"

11 "Well, we don't have enough staff."

12 "Well, why didn't you make a phone call?" I think I even  
13 said, "You know, we have ten people at our office five miles  
14 away that all could have taken him to the doctor. All you  
15 would have had to do was make a phone call."

16 I asked about if either of them had asked Ms. Lanzoratta  
17 who has a wheelchair van to swap at the house. You know, one  
18 could have come there and she could have come -- no, they  
19 hadn't done that.

20 I gave -- I went down the list. "You could have called  
21 the cabulance, "Does Client R have any cash in his petty cash,  
22 you could have used that money to take a taxi if you didn't  
23 have money on your own." We always, if there is a snowstorm or  
24 there is an event where a staff can't drive in, the agency pays  
25 for the taxicab, so we could have done some sort of taxi.

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1 Did it need a 9-1-1 call? Not -- not unless all of the  
2 options would have been exhausted first, but quite simply, the  
3 easiest thing for them to do would have been to call the  
4 office. Call me, call Mieke, call the receptionist. Say, "I  
5 have got a client here that needs to go to the doctor. He is  
6 complaining of stomach pain." A Scheduler could have sent  
7 someone out immediately.

8 Q Now, could either Ms. Sale or Ms. Gates have transported  
9 him to the doctor themselves?

10 A They do not have the correct insurance to transport.

11 Q Was your concern the fact that they themselves did not  
12 transport the client?

13 A No. My concern was the fact that the client had asked to  
14 see a doctor and they failed to seek medical attention. You  
15 know, a phone call would have changed this whole thing  
16 dramatically, just asking for help.

17 Q Was Client R eventually -- were arrangements made to  
18 transport Client R to a physician?

19 A Yes, I asked Mieke who was also on site, to make a couple  
20 of those phone calls, so between her and the ladies in the  
21 house, they arrange to have, I believe, Ms. Sale drive herself  
22 to where Ms. Lanzoratta was, and then Ms. Lanzoratta would come  
23 back.

24 You know, I even asked Client R, you know, "Do we need an  
25 ambulance? Is it that bad," and he shook his head no, so it

1 wasn't -- it wasn't ambulance bad, but still, you know, "Want  
2 to see a d-d-doctor." He just kept saying the same thing over  
3 and over again. So, obviously he wanted to see a doctor.

4 Q So, am I correct was at that time, or at some time,  
5 transported to the doctor?

6 A Yeah, within a couple of hours, he was -- with the drive  
7 time back and forth, getting the van, getting him dressed,  
8 loading him up, they saw a doctor.

9 In the meantime, though, I had also instructed the ladies,  
10 both of the ladies, as they were both within -- as far away as  
11 me and the Judge are to me, to --

12 Q Tell us about how close that is --

13 A Ten -- we weren't no farther than six, eight, ten feet  
14 away. It is a small narrow end of the house; the bedrooms and  
15 bathrooms were all right in the same vicinity.

16 I said, you know, "Can one of you" -- I had already showed  
17 Ms. Sale the places that needed to be taped up, and I said,  
18 "Can either of you guys tape the wheelchair up before you put  
19 him back in it again," and one of them said, "What kind of  
20 tape?"

21 I said, "Do you have medical tape or do you have band-  
22 aids? One or the other will work just fine, and they had both.

23 Q Okay.

24 A And when I went back out to the house the next day, if I  
25 can go ahead a little bit, I took the tape out of their med kit

1 that they have there, so they had a basic first-aid kit there.

2 Q Let's go back.

3 A Uh-huh.

4 Q So, following -- following what you talked about on the  
5 21st --

6 A Uh-huh.

7 Q Then the next day, following what happened on the 20th,  
8 the next day, the 21st, did you return to the house?

9 A Yes, I went to check out how Client R was doing. I went  
10 to assess him.

11 Q And when you arrived, did you inspect the wheelchair?

12 A I did, and I found that it hadn't been properly fitted  
13 with tape on the sharp points as I had asked.

14 Q And what did you then do?

15 A I ended up doing it myself. I -- I think I had probably  
16 looked a little frustrated, and I was a little frustrated. I  
17 said, "Does somebody have a first-aid kit around here with  
18 medical tape or band-aids?"

19 "Yes."

20 The first-aid kit was retrieved and I ended up taping the  
21 points up and taking pictures.

22 Q And the results of your efforts in taping the wheelchair,  
23 is that depicted on Exhibit for identification, No. 46?

24 A It is, and I will note that -- you will see that the  
25 pictures that I took with Client R in the chair, he was in the

1 A Because the clients were not given medical attention --  
2 the client asked to seek medical attention and the staff failed  
3 to provide that to him. I felt that constituted abuse and  
4 neglect.

5 Q And Exhibit No. 47 for identification, can you tell us  
6 what that is?

7 A It is a memo that I wrote to Ms. Sale letting her know  
8 that she was suspended, and on administrative leave while I  
9 investigated the incident.

10 Q And I will hand you that which has been marked for  
11 identification as Employer's Exhibit No. 48.

12 A Yes.

13 **(Employer's Exhibit No. 48, marked for identification.)**

14 Q BY MR. LOFLAND: Okay, I will ask you what that is.

15 A It is the same type of letter. This one was given to  
16 Hannah Gates. This one is dated December 30th, 2011, letting  
17 her know that she is on administrative leave pending my  
18 investigation.

19 MR. LOFLAND: Move for the introduction of General  
20 Counsel's Exhibit No. 47 and General Counsel's Exhibit No. 48.

21 MR. JENSEN: No objection, here.

22 MR. FIOL: No objection.

23 JUDGE POLLACK: Employer's Exhibit No. 47 and Employer's  
24 Exhibit No. 48 are received.

25 **(Employer's Exhibit No. 47 and 48, received into evidence.)**

1 Q BY MR. LOFLAND: Now, what has actually happened to this  
2 Client R?

3 A As far as investigations or --

4 Q As far as his medical condition.

5 A Oh, okay.

6 MR. FIOL: Objection, Your Honor --

7 MR. JENSEN: Objection, as well.

8 MR. FIOL: Not only is this vague, there is no timeframe,  
9 and I think that anything that happened after December 23rd is  
10 completely irrelevant.

11 Q BY MR. LOFLAND: Did you take into consideration the  
12 medical condition of Client R, that occurred following this  
13 incident of December 20th?

14 A Of course.

15 Q Tell me what happened.

16 A He continued for the next couple weeks of having stomach  
17 pains like he had. He was released that day from PromCare  
18 without -- without much of a diagnosis. He went, I believe,  
19 four more times to the doctor and finally it was ruled after  
20 seeing a specialist, that he was having an upper GI bleed.

21 MR. FIOL: Your Honor, move to strike. Again, this goes  
22 to the relevance of what happened to Patient R after December  
23 23rd into January and February. That I don't understand,  
24 because you have been trying to state that an incident that  
25 happened on the 20th that was remedied, in their view, on the

1 Alicia Sale?

2 A I did.

3 Q And was it different in any manner, other than name?

4 A It was not.

5 Q So, tell me, if you will, why is it that you decided to  
6 terminate Ms. Gates and Ms. Sale.

7 A Well, I was ultimately quite concerned about the fact that  
8 they didn't seek medical attention for Client R. I -- I was  
9 surprised when I was in the house that they didn't, you know,  
10 act on it. I was also quite surprised that they didn't fix his  
11 chair and put him back in the chair again. So, I was -- I  
12 think -- I don't know if they had their own agenda or what, but  
13 they chose not to make that decision that day, and I -- and for  
14 them to not make that decision made me uncomfortable with them  
15 making other decisions for clients in our agency.

16 Q Did you think that this was a serious and substantial  
17 oversight on their part?

18 A Most definitely, and as it turned out, the gentleman had  
19 an upper GI bleed.

20 Q Now, in the documents that have been admitted, was their  
21 written responses to the questions --

22 A Yes.

23 Q -- as to what happened.

24 A Yes.

25 Q Do you recall or know whether they had acknowledged that

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1 they had been told by Client R that he wanted to go to the  
2 doctor?

3 A Yeah, you know, the story kept changing. You know, the  
4 story first went to, "Yeah, we called our Head of Household,"  
5 to "No, we are not sure if we called our Head of Household."  
6 That almost made it worse, you know.

7 If one of the ladies had said, "Boy, we should have called  
8 the doctor," I might have felt a little bit better about it,  
9 but that isn't even how it turned out, and the other thing is,  
10 if the injuries of unknown origin had happened, he might never  
11 have got to the doctor that day. I mean, we might have been  
12 stuck with an ER -- an upper GI bleed weeks later.

13 MR. FIOL: Objection to speculation.

14 JUDGE POLLACK: All right, sustained.

15 When you decided to terminate them --

16 THE WITNESS: Yes.

17 JUDGE POLLACK: You had their letters in which they both  
18 stated that Client R had never asked to see a doctor.

19 THE WITNESS: Right. They weren't telling the truth  
20 because that is not what they told me that morning. It gave me  
21 grave concern as well. They stated that he had been asking all  
22 morning to go to the doctor. When I first questioned them,  
23 they said this is the norm for him to ask to go to the doctor,  
24 and that is how I based my decision.

25 I was -- the fact that they changed their story didn't

1 MR. LOFLAND: Yes, please.

2 JUDGE POLLACK: Okay, Floyd, please put this in the  
3 Rejected File.

4 THE COURT REPORTER: Yes, sir.

5 **(Employer's Exhibit No. 51, was REJECTED, and placed in the**  
6 **Rejected Exhibit File.)**

7 Q BY MR. LOFLAND: Are you familiar with a former employee  
8 of Kitsap Tenant Support Services, Bonnie Minor?

9 A I am.

10 Q She was employed by Kitsap Tenant Support Services?

11 A Yes, she was.

12 Q And in what position was she employed?

13 A She started as a Direct Service Staff and at the time of  
14 her discharge, she was a Head of Household.

15 Q And was she in a particular program?

16 A She was in the Community Protection Program. She ran the  
17 Olympus House.

18 Q I will hand you that which has been marked for  
19 identification as Employer's Exhibit No. 55.

20 A Okay.

21 **(Employer's Exhibit No. 55, marked for identification.)**

22 Q BY MR. LOFLAND: Are those files and records from Ms.  
23 Minor's personnel file?

24 A Yes, they are.

25 MR. LOFLAND: I would move for the introduction of

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1 Employer's Exhibit No. 55.

2 MR. FIOL: No objection.

3 MR. JENSEN: No objection.

4 JUDGE POLLACK: Employer's Exhibit No. 55 is received.

5 **(Employer's Exhibit No. 55, received into evidence.)**

6 Q BY MR. LOFLAND: I have now handed you what has been

7 marked for identification as Employer's Exhibit No. 56.

8 **(Employer's Exhibit No. 56, marked for identification.)**

9 Q BY MR. LOFLAND: Can you tell us what that is?

10 A It is our Statement of Philosophy. It is our Mission  
11 Statement.

12 Q And is that have a signature on it?:

13 A It does; Bonnie Minor's signature.

14 MR. LOFLAND: Move for the introduction.

15 MR. FIOL: No objection.

16 JUDGE POLLACK: Employer's Exhibit No. 56 is received.

17 **(Employer's Exhibit No. 56, received into evidence.)**

18 Q BY MR. LOFLAND: So explain to me, if you would, what  
19 happened with Ms. Minor.

20 A I became aware in the beginning of December that Ms. Minor  
21 had cancelled a client function, Christmas party, that we have.  
22 This isn't the agency Christmas party. This is the client  
23 Christmas party where the clients kind of get together as  
24 friends at a household, exchange gifts, and have food, so this  
25 is their -- this is the client Christmas party.

1 I had found out -- I believe I had a text message from the  
2 therapy -- she had therapy, and one of the clients that was in  
3 therapy, a gentleman who was -- doesn't work with Ms. Minor at  
4 all. She would see him in therapy, possibly -- had told the  
5 therapist that I had cancelled the Christmas party, and she  
6 wanted to know why in the world would I cancel the Christmas  
7 party.

8 Q And had you cancelled the Christmas party?

9 A I had not, nor have I ever.

10 Q And at that point, did you have any knowledge that the  
11 Christmas party had been cancelled?

12 A I had no clue. I responded back to the therapist and  
13 said, "I don't have any idea. I will check it out in the  
14 morning." I just thought it was some kind of client  
15 misunderstanding.

16 Q So what is it you did to check out what you had been told  
17 by the therapist?

18 A Well, I should go back and say that the -- I knew who had  
19 -- I asked the therapist and she said that Bonnie Minor had  
20 explained in therapy that the Christmas party was cancelled.  
21 Patty, the therapist, had already done her research. She asked  
22 Client R, Client R said, "Bonnie told me," so I already knew  
23 that, so I figured that I -- on the way in in the morning, I  
24 would give Ms. Minor a call and see what the story was.

25 Q And did you do so?

1 A I did. I called her from my cell phone driving in on the  
2 way to work, I think. It must have been ten minutes before  
3 eight or something, I believe. So she had been on shift since  
4 seven.

5 Q And tell me about that telephone conversation.

6 A I called the house number. She answered and I kind of  
7 went right to the question. I told her that the therapist had  
8 said that the party was cancelled and I asked her, you know,  
9 "What happened?"

10 She told me that she had cancelled the party, yes. She  
11 had cancelled it because she had been talking with Janie in  
12 Client Resource and Janie had explained to her that the staff  
13 couldn't eat the client food anymore, and we had a long  
14 conversation about eating the client food and -- for your  
15 benefit, I will explain if -- so if there is a party, and we --  
16 say I put on the party as an agency. We make hot dogs and  
17 hamburgers and pop, everybody can eat the food; clients, staff,  
18 me, because I purchased the food.

19 Now, if it is a client party at a house and the clients  
20 have purchased the food, then only the clients can eat the food  
21 at the house. The staff have to have their own separate food  
22 that they provide.

23 So, that is where our conversation went. I explained -- I  
24 said, "So what happened?"

25 She says, "Well, we had to cancel it because, you know,

1 some of the clients didn't have money," and she was trying to  
2 make some excuses as to why -- why it got cancelled.

3 Long story short, I explained to her that if the clients  
4 didn't have money, I would be happy to loan them money. That  
5 has been our protocol before. She talked about the gift  
6 exchange and I can't remember. I think it was a \$10.00 gift  
7 exchange that year. I explained that if the client didn't have  
8 \$10.00 for a gift, we would be happy to either loan the client  
9 the money as we are allowed to do per WAC, or I would be happy  
10 to donate the client that couldn't attend.

11 She told me where the party was. I guess it was at the  
12 Rainier House.

13 So, I got off the phone. I figured it -- I figured it was  
14 squared away. It seemed like she got it. She understood. She  
15 said, "Well, okay. The party is back on."

16 Q And do you recall the date on which that telephone call  
17 was --

18 A You know, I don't have that in front of me. I know I -- I  
19 have a phone record.

20 Q Possibly how long did that call last?

21 A Less than ten minutes; maybe seven, eight, nine minutes.  
22 Probably less than ten.

23 Q I will hand you now what has been marked for  
24 identification as Employer's Exhibit No. 59, and ask you what  
25 that is.

1 A That is the phone record and it says "Detail for Michael  
2 Closser," but that is my phone number, the -- my work phone is  
3 under his main account as he is the business owner.

4 It shows that on 12-07 at 7:53 a.m. I made a call. The  
5 number that is on there is the household number, and I don't  
6 know if we should redact that number, or is that okay?

7 **(Employer's Exhibit No. 59, marked for identification.)**

8 Q BY MR. LOFLAND: Yes, I would suggest that we redact it  
9 because --

10 A At least the first three digits maybe, so it is  
11 identifiable still.

12 You will see that it came from Gig Harbor. I live in Gig  
13 Harbor, so I was on my way to work, and it looks like the call  
14 lasted seven minutes.

15 MR. LOFLAND: Judge, may we redact the last four numbers  
16 of that?

17 THE WITNESS: Can we redact the first three so that the  
18 last -- so that the last four would identify it for sure?

19 MR. FIOL: Well, before we do that, I may want to ask the  
20 witness some questions on the document, and then we can do it.  
21 I just wanted to --

22 JUDGE POLLACK: Okay.

23 MR. FIOL: -- make sure --

24 THE WITNESS: Sure.

25 MR. FIOL: -- before we do that.

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1 THE WITNESS: Sure.

2 [Long pause]

3 MR. LOFLAND: I thought Counsel wanted to ask questions.

4 MR. FIOL: Well, I would wait until we move for the  
5 introduction of the --

6 THE WITNESS: On the other note, I guess, there is an  
7 awful lot of other phone numbers on here, too. So -- it is my  
8 personal history of who all I called that morning.

9 JUDGE POLLACK: Well --

10 MR. FIOL: Well, then let me ask my questions now, if you  
11 don't mind.

12 THE WITNESS: Sure.

13 MR. LOFLAND: That's fine.

14 MR. FIOL: Now, the phone number that we are looking at  
15 and the phone call is the one at 7:53, right?

16 THE WITNESS: That's correct.

17 MR. FIOL: All right, so I just want to ask -- and that  
18 call was made to the number at the hose, correct?

19 THE WITNESS: That is correct, yes.

20 MR. FIOL: The house that Bonnie Minor was working at?

21 THE WITNESS: Yes, that's correct. Yes.

22 MR. FIOL: And then, there were no other calls made to  
23 Bonnie Minor at the house, correct?

24 THE WITNESS: The other numbers are other numbers that I  
25 use for work, other households.

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1 MR. FIOL: Households?

2 THE WITNESS: Yes.

3 MR. FIOL: And so any call that would have been made to  
4 Bonnie Minor afterwards would have been made to her cell phone  
5 number?

6 THE WITNESS: It could have been. I mean, I -- I don't  
7 have her cell phone number memorized, nor do I have it, so --  
8 but I can go down and listen.

9 MR. FIOL: I just saw that one time to the house.

10 THE WITNESS: Sure. There -- yeah, there is that single  
11 call, and then the next -- interestingly enough, the next call  
12 is to the Rainier House.

13 MR. FIOL: The eight o'clock call?

14 THE WITNESS: That's correct, yes.

15 MR. FIOL: I will ask other questions later.

16 THE WITNESS: Sure.

17 MR. FIOL: That is all I wanted to know.

18 THE WITNESS: Yep.

19 Q BY MR. LOFLAND: How long did that call last?

20 A It says seven minutes.

21 MR. LOFLAND: I would move for the introduction, but I --  
22 I would ask that we be able to redact --

23 JUDGE POLLACK: Well, maybe rather than to offer this in  
24 evidence, just stipulate that there was a phone call made on  
25 December 7th at 7:53 a.m. to the house, and the records show

1 that it was seven minutes.

2 MR. LOFLAND: I agree. That is what I was going to  
3 propose.

4 JUDGE POLLACK: And then we don't have to put in the  
5 document and redact all of these phone numbers.

6 MR. LOFLAND: That's fine. WE WILL, SURELY.

7 MR. FIOL: I don't know. I might want to ask some  
8 questions on some of these other numbers, so --

9 THE WITNESS: I see that I called my wife, so that is good  
10 news.

11 MR. FIOL: Yeah, good boy.

12 MR. LOFLAND: I don't know of the fact that Mr. Fiol may  
13 want to ask questions about this document affects the  
14 stipulation, but he would certainly be privileged to do so on  
15 cross examination if he chooses.

16 I think what we have before us still is the stipulation  
17 that --

18 MR. JENSEN: I will enter into it.

19 MR. FIOL: What was it?

20 JUDGE POLLACK: That on December 7th, at 7:53 a.m., there  
21 was a phone call made to the house and that that call lasted  
22 seven minutes.

23 MR. FIOL: Okay, I will enter into it.

24 MR. JENSEN: That was December 7th, 2011.

25 JUDGE POLLACK: Yes.

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1 Thank you.

2 All right, the stipulation is received.

3 MR. LOFLAND: I will just take that back so it doesn't  
4 fall into -- can I have it, please?:

5 MR. FIOL: So that is withdrawn, right, Mr. Lofland?

6 JUDGE POLLACK: Yes.

7 MR. LOFLAND: Pardon me?

8 MR. FIOL: Your exhibit is withdrawn, correct?

9 THE COURT REPORTER: Employer's Exhibit No. 59 is --

10 MR. LOFLAND: Yes, Employer's Exhibit No. 59 is withdrawn.

11 THE COURT REPORTER: Thank you.

12 **(Employer's Exhibit No. 59, was WITHDRAWN.)**

13 Q BY MR. LOFLAND: So what -- did anything happen following  
14 that conversation on December 7th?

15 A I called -- you will see the next call is to the Rainier  
16 House where the party was happening. I talked to the Head of  
17 Household there, and just made sure that we were on-board, let  
18 them know that the party was on, and I just wanted to get his  
19 view on the whole thing, and he said, "Okay, cool. The party  
20 is on."

21 Q Did you then discover anything about Bonnie Minor  
22 following that call to her?

23 A Yeah, I was contacted by Joy Woodward sometime that day.  
24 Joy is another staff that informed me that she had witnessed  
25 what happened directly after that phone call, and that was that

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1 Bonnie --

2 MR. FIOL: Objection, hearsay.

3 MR. JENSEN: I concur.

4 MR. LOFLAND: Not offered for the truth of the matter  
5 asserted, but upon the basis upon which he acted.

6 JUDGE POLLACK: Okay, go ahead.

7 THE WITNESS: Ms. Woodward explained to me that after  
8 getting off of the phone with me, a conversation that I thought  
9 was a pretty decent conversation, Ms. Minor went to each of the  
10 clients that were there. There were three clients in the  
11 house, and told them that I had screamed and yelled at her on  
12 the phone and she didn't tell them that the Christmas party was  
13 back on, so -- what I thought she would do was get off the  
14 phone and say, "Hey, guys. The Christmas party is back on."  
15 Instead she told them that I was yelling at her and treated her  
16 very meanly.

17 MR. FIOL: Well, Your Honor, I want to make it plain that  
18 I have an objection to continuing as long as we are getting  
19 into what Joy Woodward said as opposed to, you know, did he  
20 have a phone call with her which caused him to take some other  
21 action.

22 JUDGE POLLACK: Okay, it is not being received for the  
23 truth of the matter asserted. It is just being received to  
24 show that this is information that the witness received.

25 Q BY MR. LOFLAND: Based upon the conversation with Ms.

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1 Woodward, which she related to you, did you then take  
2 additional action?

3 A Yeah. That obviously caused me to have more concern in  
4 the matter. As I said, I guess, I thought the party was  
5 handled. I wasn't as concerned as to why it was cancelled  
6 anymore. I was just concerned about, you know, how -- how Ms.  
7 Minor had acted afterwards, and we called her in to have a talk  
8 with her about it.

9 Q And tell me about that conversation.

10 A I asked her to come in the office. She was pretty  
11 immediately -- she came in pretty quickly, and I met with her  
12 and Kathy Grice from HR. I met her in the conference room and  
13 I just relayed what I had heard, and she admitted to me, yeah,  
14 that she had got off the phone and told the clients that I had  
15 screamed and yelled at her, and that I was mean to her.

16 I asked her why she did that, and she said, "Because I  
17 felt you were treating me like my father."

18 I said -- I asked her, "Well, did I yell at you?"

19 "Well, no, you didn't yell at me."

20 I said, "I thought our conversation was a good one." We  
21 went through the conversation to make sure that she understood,  
22 you know, and she didn't give me a whole bunch. I have got to  
23 be honest with you.

24 She didn't say, "Yeah, that was a bad idea," or "Wow, I  
25 shouldn't have done that," admitted that she did it, and just

1 kind of gave me a blank stare.

2 I went over with her why that was particularly concerning  
3 which is the fact that I had built trust with those clients  
4 over the years. I had known each of those clients for almost  
5 fifteen years, and I explained to her that that is  
6 triangulation. She was already oriented on what triangulation  
7 was. I explained how that could affect the treatment team, how  
8 that could affect those clients, and I told her that it was  
9 pretty mean for her to do that, and I asked her if there was  
10 some other agenda why would she do that, and she really didn't  
11 give me much.

12 Q Now, you said that you knew the clients. Is there a  
13 client that Bonnie Minor was seeing, a Client T?

14 A Yes, a female client.

15 Q Tell me about Client T.

16 A She is 36 or 37 years old. She has been in CP since she  
17 was -- in the Community Protection Program since she was 21.

18 Back in the old days, the referral just showed up on our  
19 doorstep, literally. The Case Manager stapled the referral  
20 packet to our door or office, with very little else. I went  
21 out and met with the client. She was living in Tacoma. When I  
22 rolled up, there was a Case Manager from the State there,  
23 throwing all of her things away, out the window. She was on  
24 the third story. They were throwing her things into a  
25 dumpster.

1       The Case Manager, and I can't even remember her name  
2 anymore, she said, "Are you here to pick up this client, too?"

3       I said, "Yes." I had a U-Haul truck and she said, "Well,  
4 there is not going to be much left because we are -- all of the  
5 stuff is inappropriate, and it was her personal belongings, and  
6 she thought they were inappropriate because they were sexual in  
7 nature.

8       So, right off the bat, Client T was distrusting of coming  
9 into this new program. We had -- and I was -- I have got to be  
10 honest with you. I was pretty new to CP. I was new to client  
11 referrals in CP, and so any of the other staff that was with me  
12 had a hard time even convincing her to get in the truck, so we  
13 did --

14       A long story short, we got her stuff, what was left,  
15 together, was able to get some of the stuff out of the  
16 dumpster. It was just totally disrespectful. We took her to  
17 the house -- for the first couple months, she laid under her  
18 bed. She was scared to death to come out. She is the client  
19 that had been unfortunately raped by a man, driven across  
20 country in a trailer, so -- raped by her father, so she didn't  
21 have a lot of good male figures in her life and here is a guy,  
22 me, there, and here is another male staff, you know, picking  
23 her up, right, so she didn't -- it started off she was pretty  
24 scared.

25       I was new to CP, I had been to Comp-U's trainings. I knew

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1 I needed to form a bond with her, so I -- she was laying under  
2 the bed so I crawled underneath the bed with her with the other  
3 staff in the room and I asked her what was wrong, and she had a  
4 stapler and she was stapling her wrist. She was doing this for  
5 days. We couldn't get the stapler away from her. Cops came  
6 out and they would take it away, and she would bring it back,  
7 and it was her stapler so we couldn't restrict it at the time.  
8 There was no staples in it. We had taken the staples out.

9 So finally, I laid underneath there. I bought my own  
10 stapler, and we -- I pretended to staple my wrist and she  
11 started giggling, and I said, "That's pretty silly, isn't it,"  
12 and she said, "Boy, that looks silly that you are doing that."

13 Long story short, we built on this relationship over the  
14 years. So, we started talking. At the time, she was slamming  
15 her staff's arms in the door. She was very, very difficult,  
16 running away from the house. I would get calls at two, three,  
17 four in the morning. "Client T has run away."

18 So, you know, fifteen years later we have a gal who is  
19 doing much better. She is physically not in great shape  
20 because of some old injuries that she had, but she is mentally  
21 much better. She doesn't run away anymore. She works. We  
22 have a nice relationship. You know, I couldn't even touch her.  
23 She would cringe when a guy came in the room, and now she will  
24 pat me on the back. "Hey, how are you doing?" So if she  
25 touches me, I will touch -- will pat her on the back. "Are you

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1 having a bad day?"

2 "Yeah." We don't hug because that is not appropriate, but  
3 it is a huge step that she trusts me at all.

4 If she runs away and she had a weapon in her hand, I could  
5 just say, "Client T, can I just have that back," and she would  
6 just hand it to me. She wouldn't give it to any other staff,  
7 so I was lucky enough to form a pretty good bond with her, from  
8 really consistent care, always getting the same thing from me,  
9 never judging her, never being angry with her, never raising my  
10 voice to her. Just coming out and saying, "What's wrong? Can  
11 I help you?"

12 So, I was concerned -- when I met with Ms. Minor that she  
13 was really messing that relationship up, and out of my own  
14 selfishness, of course, I like the relationship, but as a  
15 therapeutic model, we were going to take some steps back. You  
16 know, I was concerned about that. I was concerned that the guy  
17 in her life that wasn't abusing her, that treated her fairly,  
18 that wasn't raping her, was all of a sudden -- could be viewed  
19 as the bad guy. It is triangulation at its purest form.

20 There are two other clients in the house who I have -- who  
21 I can share the same type of a story with, you know, who trust  
22 me, so I was concerned that that trust wouldn't be there  
23 anymore.

24 Q And so what -- what -- what decision was made as to Bonnie  
25 Minor?

1 A I decided -- I contacted my administrator. I relayed the  
2 story to him. I talked to the other members of the treatment  
3 team, talked to the therapist just to get her viewpoint on the  
4 whole thing, as I do a lot of times. I talked to my program  
5 coordinators, and the decision was ultimately made that we  
6 would terminate Ms. Minor.

7 Q And when was that decision made?

8 A I don't have the date in front of me, I'm sorry. But, it  
9 was shortly -- it was -- we made the decision pretty quick in  
10 that matter. I was concerned about her going back to the  
11 house. I contacted you, as well, as we ran everything by each  
12 other.

13 Q Was -- was it made on the same day that the telephone call  
14 was made, December 7th?

15 A I believe so. It was very quick.

16 Q Do you have any sense or any memory of the time of day  
17 that the decision was made?

18 A The time of day that my decision was made?

19 Q Yes.

20 A I got to tell you, it was pretty quick after that meeting.  
21 It was -- it was before noon.

22 Q Okay.

23 A I mean, I was super unimpressed. Again, I was  
24 unimpressed. I wish the young lady would have just said, "Man,  
25 that was a bad mistake. Let me go back" -- I mean, we could

1 have sat down with the client maybe and she could have  
2 explained that she had made an error. We could have maybe  
3 fixed some of that damage.

4 Q At the time you made the decision to terminate Ms. Minor,  
5 did you know whether Ms. Minor was a supporter of the Union?

6 A I had no idea. It wouldn't have changed my decision  
7 either way, but I had no idea at the time, no.

8 Q Did you -- subsequently after the termination, did you  
9 discover circumstances involving Ms. Minor, after she had been  
10 terminated, having contact with clients of KTSS?

11 MR. JENSEN: Objection --

12 MR. FIOL: Objection --

13 MR. LOFLAND: It has to do -- Counsel has asked for  
14 reinstatement.

15 The After Acquired Evidence Rule would allow that to be  
16 considered, in terms of the decision, if she signed, as she  
17 did, the rules that prohibited contact with clients even after  
18 the termination, and then she violated those rules. I think  
19 that is a significant issue.

20 MR. FIOL: If it is admitted for that purpose only, for  
21 remedial purposes.

22 JUDGE POLLACK: On the issue of reinstatement?

23 MR. FIOL: Yes.

24 THE WITNESS: Yeah, there was a women's -- a women's group  
25 that meets, and they decided that they would go to a casino

1 down south of Olympia, so --

2 Q BY MR. LOFLAND: Well tell me -- before you go on --

3 A Sure.

4 Q Tell me what the women's group is.

5 A Oh, sure. It is a group -- it has been -- there is a  
6 men's group and a women's group that has been, since I started,  
7 it has been -- it is a once a week meeting where a bunch of  
8 guys meet and watch a football game or eat hot dogs, and I  
9 don't know what the girls do on the girls' things, but they go  
10 to a casino that time. No guys allowed. One of those things.

11 So they sit around and talk about different things. It is  
12 staff with our -- our Kitsap Tenant Support Services. It is  
13 kind of a club. They decided that week to go to a casino I  
14 think down in Grand Mound, just right past Olympia.

15 And Barbara Mitchell was working for us as an -- in the  
16 Support of Living Light program, as I told you before, Bonnie's  
17 twin sister. So, Barbara was taking some clients down in her  
18 vehicle, and I received word that Bonnie had also attended that  
19 outing, so she rode in the car with -- so Barbara and Bonnie in  
20 the car with KTSS clients.

21 Q And that was at a time after -- after Bonnie had been  
22 terminated?

23 A That is correct, yes.

24 Q And would that have violated the professional agreement?

25 A Yes, it violates the agreement that you will not contact

1 clients after you are no longer employed at KTSS.

2 Q Then why is that rule important?

3 A Well, it is a boundary issue. You know, it keeps the  
4 professional boundary open. It lets -- it lets clients know  
5 that our staff are there to work. Yes, we can have nice  
6 relationships and have friendships, and trusting relationships,  
7 but after the work setting is done, that is supposed to end  
8 that relationship.

9 *[Long pause]*

10 JUDGE POLLACK: I don't think 53 was offered.

11 MR. LOFLAND: Judge, 52 and 53 are duplicate exhibits; 52  
12 is the termination of Gates and 53 is the termination of Sale.  
13 They are duplicate exhibits of what was already in the record  
14 at the time of one of them, so those were withdrawn.

15 **(Employer's Exhibit No. 53 and 54, were WITHDRAWN.)**

16 JUDGE POLLACK: I notice that Employer's Exhibit No. 55  
17 was received.

18 MR. LOFLAND: Yes, Employer's Exhibit No. 55 is the  
19 employment information about Gates -- Minor, excuse me.

20 JUDGE POLLACK: Please make sure that Floyd has copies.

21 *[Long pause]*

22 JUDGE POLLACK: Okay?

23 Q BY MR. LOFLAND: Okay, Mr. Frey are you familiar with a  
24 former employee of Kitsap Tenant Support Services, Johnnie  
25 Driskell?

1 Mr. Tharp, was also there, and we talked about the incident  
2 that happened. She contended that it was no big deal, that  
3 this was the norm for her, that everybody else did it. She  
4 pretty much blew me off and thought it wasn't important. I  
5 cited policy and WAC in regards to loaning clients money.

6 She said it wasn't a loan. I said, "Were you -- are you  
7 getting reimbursed?"

8 She said, "Yes, I am getting reimbursed."

9 "Well, yes, then it is a loan."

10 "Well, no, it was a gift." She kind of bounced back and  
11 forth to whether it was a gift or a loan or a donation. She  
12 told me that other clients who have done talent shows and have  
13 done Halloween parties and things of that nature, all of the  
14 staff do -- she made it seem like it was the norm, and I  
15 explained to her that it wasn't, and I explained to her why.

16 Q Now, why is it important not to make loans or gifts to the  
17 clients?

18 A It gives the clientele an improper idea of what it is,  
19 that somebody is doing it. It is against professional  
20 boundaries.

21 For example, maybe Johnnie has the money to loan this  
22 young lady, money for gloves that I don't. So, if I am also  
23 the staff, then I look like I don't like this client as much,  
24 and it just puts us all on a different -- on different levels  
25 at that point, so we -- it is not suggested in any caregiving

1 Q And are those the type of records that you rely on in  
2 looking at employees' conduct, actions, or inactions?

3 A I do, yes.

4 MR. LOFLAND: Move for the introduction of Employer's  
5 Exhibit No. 118, please.

6 MR. JENSEN: No objection.

7 MR. FIOL: No objection.

8 JUDGE POLLACK: All right, Employer's Exhibit No. 118 is  
9 received.

10 **(Employer's Exhibit No. 118, received into evidence.)**

11 *[Long pause]*

12 Q BY MR. LOFLAND: I am handing you that which has been  
13 marked for identification as Employer's Exhibit No. 119.

14 A Yes.

15 **(Employer's Exhibit No. 119, marked for identification.)**

16 Q BY MR. LOFLAND: This is a memo of October the 11th, 2012.

17 A Right.

18 Q Let me ask you a question: Did you have a concern or  
19 problem with Ms. Hennings on or about that time regarding  
20 monies in a financial record?

21 A Yes.

22 Q And can you explain to us what those concerns would be, or  
23 those problems were?

24 A She had attempted to turn in her financial ledgers to Ms.  
25 Parson in Resource Management at her normal paperwork meeting,

1 and there was \$3.00 that was unaccounted for, so basically  
2 there was \$3.00 extra.

3 Molly -- Ms. Parson came back to the office and explained  
4 to me what was going on, and -- so I called Ms. Hennings-Lucas  
5 up and we had a -- we had a phone conversation with myself -- I  
6 had her on speakerphone, and Ms. Parson was next to me and so  
7 we talked about the events, and where the \$3.00 came from, and  
8 I do note that I didn't -- I don't believe that I actually ever  
9 turned this in, so this was -- this was -- this was started and  
10 I will tell you the reason is, the story changed three times  
11 and at the end of the whole thing, we realized that there  
12 wasn't even -- that the \$3.00 wasn't missing. There was  
13 nothing wrong.

14 It started out, Lisa told me she loaned the client money,  
15 so we went through -- down that road. "You know you are not  
16 supposed to loan the clients money?"

17 "Yes."

18 "You know, this is breaking protocol?"

19 "Yes."

20 As we talked farther, I believe she -- we got off the  
21 phone and that was the end of that, and then she called me back  
22 and she told me that she disclosed that her sister had actually  
23 loaned the money. So, and we went down that road, and we down  
24 the road of, "Well, you should have let me know this in the  
25 first place."

1 Lisa said, "Yeah, you are right. I should have told you  
2 that and I didn't want to throw my sister under the bus," so we  
3 went down that road. And then I explained -- so then I called  
4 her sister up and talked to her sister, and went down that  
5 road.

6 At the end of it, I -- we realized that neither of them  
7 had loaned money, that there was a \$3.00 error that everybody  
8 had missed.

9 I ended up not turning this end. It was -- I have got to  
10 tell you, it was frustrating because I had -- I had two people  
11 both saying that they did this, so I had Lisa saying, "I loaned  
12 the money," I had her sister saying, "Yeah, I loaned the  
13 money," and both of them were covering for each other, as I  
14 believe Ms. Hennings testified to.

15 But this memo was never -- was never put into a file.

16 Q Does this memo truly and accurately reflect the events  
17 that --

18 A It does. I started writing it. Right after the  
19 conversation, I quickly went in and jotted these things down,  
20 as I do, so that I can remember them for later, and as I was  
21 investigating, we realized that it was just a really bad story.

22 MR. LOFLAND: I would move for the introduction of  
23 Employer's Exhibit No. 119.

24 MR. JENSEN: I object, it is hearsay.

25 JUDGE POLLACK: Well --

1 narratives in two weeks, the other staff followed suit, so  
2 there -- the example that she is setting wasn't a very good one  
3 as a Head of Household.

4 I was concerned about her leaving that client -- those  
5 clients unattended and not calling the office. That makes me  
6 think that she is not much of a team player at that point  
7 either, not willing to follow the protocol.

8 As far as general caregiving, I mean, I was concerned  
9 about caregiving as well, the med errors, and the missed  
10 doctors' appointments.

11 You know, I have to be honest with you, I was close -- I  
12 was thinking about a termination with her. I mean, I was  
13 seriously considering that, given the history.

14 Q So the decision, rather than to terminate, was simply to  
15 demote?

16 A Yeah, I chose to give her a chance, so I demoted her, yes.

17 Q And the reasons that you did so were contained in  
18 Employer's Exhibit No. 126?

19 A And I weighed -- like I always do, I weighed her good  
20 traits with the mistakes she has made, as well. She -- she had  
21 shown me that she was a good caregiver. During our meetings  
22 and our investigations, she was respectful. She took  
23 direction. She admitted the mistakes that she made, and --  
24 because I felt that she deserved another chance, because she  
25 was showing me that she cared a little bit, I -- and she, you

1 know, was taking direction, I figured I would give her another  
2 chance as a caregiver.

3 MR. LOFLAND: I would move for the introduction of  
4 Employer's Exhibit No. 126.

5 MR. JENSEN: No objection.

6 MR. FIOL: No objection.

7 JUDGE POLLACK: Employer's Exhibit No. 126 is received.

8 **(Employer's Exhibit No. 126, received into evidence.)**

9 Q BY MR. LOFLAND: Where did Ms. Hennings go -- excuse me --  
10 yeah, Ms. Hennings go after the demotion?

11 A I moved her to the Christina Apartments. It was one of  
12 the -- it was the only shift that was available that met her  
13 criteria, and also was a proper match between her and the other  
14 clients.

15 Q I believe there was testimony that her former husband, Dan  
16 Hennings was the Head of Household in that?

17 A His name is Dan Lucas, yes. He -- he runs the Christine  
18 Apartments. It is more of a complex. It is one of the ones we  
19 took over when we took over another contract, so it is two  
20 units that are about twenty-feet apart from each other, so they  
21 are two full separate units, on about a three-quarter of an  
22 acre lot.

23 Yes, I moved her to the 7:00 to 3:00 shift so she was  
24 working the morning shift, and not as a Head of Household, but  
25 as a caregiver, providing services to two male clients. I note

1 A May I look at it again --

2 Q Yes.

3 A -- to double-check it?

4 Q Yes.

5 A Yes.

6 Q On or about December 20th of 2011, did you have occasion  
7 to go to the Men's House, in which Client R resides?

8 A Yes.

9 Q And how did that come about?

10 A We received a call from the Head of Household that there  
11 was bruising that had been noticed on one of the clients, so we  
12 went out to take a look at the bruising.

13 Q When you say "we," who do you mean?

14 A Myself and Alan Frey.

15 Q How did Alan come about coming along?

16 A When I received the call, I went to him as my Program  
17 Manager, and let him know the concerns, and he came with me.

18 Q When you got to that household -- well, let me ask you  
19 this: When you left, after having received the call and  
20 leaving to go to the household, did you know who was on-shift?

21 A No, I don't believe so. I know the Head of Household was  
22 working at a different house at the time.

23 Q And it was the Head of Household that called you?

24 A Yes.

25 Q When you arrived at the house, who were the staff members

1 who were on-shift?

2 A Alicia Sale and Hannah Gates.

3 Q And when you arrived, tell me what happened.

4 A Alan and myself walked back to the back with both Alicia  
5 and Hannah, while they were helping with the other clients. I  
6 believe it was Alicia who was showing us Client R's bruise.  
7 Alan was talking with Client R to see if he could see the  
8 bruises, and while he was in the bed, Client R was stating that  
9 his stomach was upset. It was hurting him, and the staff on-  
10 shift said, "No, we can't take you to the doctor. We don't  
11 have a staff today."

12 Q Did the staff say anything about whether Client R had made  
13 a request to go to the doctor before that?

14 A After questioned, when we asked the staff if he had been  
15 complaining, they said, yes, that he was complaining of stomach  
16 pain that morning and had been asking to go to the doctor.

17 Q Did they indicate how frequently he had asked to go to the  
18 doctor?

19 A Multiple times.

20 Q And who -- there were two staff, Ms. Sale and Ms. Gates.

21 A Uh-huh.

22 Q Which of the staff or did both of the staff made that --  
23 such statements?

24 A I believe it was Ms. Sale who made that statement, but  
25 both Ms. Sale and Ms. Gates made the statement that he had

1 requested to go to the doctor.

2 Q Prior to the time you got there?

3 A Yes.

4 MR. LOFLAND: Thank you. I have nothing further.

5 MR. FIOL: Are we still on the record?

6 JUDGE POLLACK: Yes.

7 MR. FIOL: Okay.

8 CROSS EXAMINATION

9 Q BY MR. FIOL: Good afternoon, Ms. Middelhoven. We have  
10 met before.

11 A Yes, good afternoon.

12 Q How are you?

13 A Good.

14 Q He had short questions and I will make mine shorter.

15 A Thank you.

16 MR. LOFLAND: So stipulated.

17 [Laughter]

18 Q BY MR. FIOL: You were out at the Hefner House on February  
19 13th of 2012; is that correct?

20 A I believe that was the date.

21 Q Had you been there before?

22 A Yes.

23 Q How often had you visited the Hefner House?

24 A I couldn't give you an exact number. I have visited lots  
25 of houses.

1 A No, I did not say I would write it down. I said that I  
2 would have been upset about it happening.

3 Q Oh, okay.

4 A Yes.

5 Q Now, we are talking about the next incident is one that  
6 took place on December 20th in 2011.

7 A Okay.

8 Q At R's house.

9 A Uh-huh.

10 THE COURT REPORTER: Is that yes or no?

11 THE WITNESS: Yes. Thank you.

12 Q BY MR. FIOL: You were with Hannah Gates when they  
13 contacted Jessica Lanzoratta to do the switch so that Jessica  
14 could come over and take Patient R to the doctor, because the  
15 two -- they didn't have the qualifications to do so, correct?

16 A Yes, I contacted Jessica Lanzoratta.

17 Q And then, Alicia Sale went over and worked at the house  
18 that Ms. Lanzoratta was working at, correct?

19 A That's correct.

20 Q And that was December 20th, but Hannah Sale stayed at the  
21 house.

22 MR. LOFLAND: Your Honor, I am going to object. This is,  
23 again, beyond the --

24 JUDGE POLLACK: No, I will allow a little leeway, but I  
25 think you got the names mixed.

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1 MR. FIOL: Did I?

2 MR. JENSEN: You mixed the two ladies names. You got one  
3 name from each person. Hannah Gates and Alicia Sale.

4 Q BY MR. FIOL: Okay, Hannah Gates and Alicia Sale.

5 A Yes.

6 Q Hannah Gates then stayed at the house and worked until the  
7 23rd, correct?

8 A Yes, I believe so.

9 Q And then Alicia Sale stayed at Ms. Lanzoratta's house to  
10 the same date.

11 A I'm sorry, what do you mean until the 23rd?

12 Q The day worked -- she worked until the 23rd and then she  
13 was placed on administrative leave.

14 A Okay.

15 Q And the same thing with Alicia Sale. She had stayed at  
16 Ms. Lanzoratta's house and stayed working until December 23rd.

17 A Right.

18 Q Okay, and then Ms. Lanzoratta stayed at the house with  
19 Hannah Gates.

20 A I believe so, yes.

21 MR. FIOL: Nothing further.

22 Thank you.

23 THE WITNESS: Uh-huh.

24 JUDGE POLLACK: Mr. Jensen?

25 MR. JENSEN: Yes, thank you.

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1 Q "And you know what, Boss? This can't be trained out of  
2 him."

3 A I was with him and he was speaking to me in the same tone  
4 of voice that he was speaking to the client, and I felt that  
5 anyone that would -- any staff that would speak to their, you  
6 know, Program Manager or Program Coordinator, in the same tone  
7 of voice and doesn't realize how they are coming across, would  
8 not be appropriate for that setting.

9 Q And never could; that is what you are saying.

10 A I was asked my opinion.

11 Q Yeah.

12 A That was my opinion.

13 Q I want to go to the -- to your involvement on -- I think I  
14 have the date correct, December 20th, 2012, I believe, when you  
15 went out to Client R, and he had the bruise and the scratch.

16 A Yes.

17 Q And who was it who you heard, if anyone, on the staff that  
18 morning say that they lacked the staff necessary to transport  
19 Client R to the doctor?

20 A I believe it was Ally Sale. We were all in the house  
21 together in the back room, and I believe it was Ally who had  
22 walked into the room and -- while we were having that  
23 conversation.

24 Q So you were all together at that time?

25 A I believe Hannah was in the room with one of the other

1 clients -- or in the bathroom with one of the other clients and  
2 Ally was in the bedroom with myself and Alan.

3 Q Oh, okay. And again, and so, Alicia, as I have it down  
4 said, "We don't have a staff today."

5 A She said, "I already told you, R-xxx, you can't go to the  
6 doctor today. We don't have enough staff."

7 Q Did she say "enough staff" or "the staff," or do you know?

8 A I don't know for sure.

9 Q Now, in order to transport R-xxx, whether he had five  
10 staff or two staff, you needed someone who had insurance, you  
11 needed the staff who was qualified under your protocols to take  
12 him, correct?

13 A Correct.

14 Q And you didn't have that, at that time, did you, in that  
15 house?

16 A She was not working at that house, but she was available  
17 at another house for all.

18 Q Right, and in fact, as far as you know, Hannah Gates, or  
19 at least one of them contacted the Head of Household, Jessica,  
20 correct?

21 A No, they had not. They had contacted her about the  
22 bruises, but I was the one who contacted her about the ride to  
23 the doctors.

24 Q So they contacted Jessica --

25 A Uh-huh.

1 Q -- and Jessica contacted you?

2 A Yes, about the bruises.

3 Q Okay, and then -- I guess they hadn't talked to her about  
4 the doctor yet, had they?

5 A No.

6 Q And then when you -- there was finally a plan put together  
7 that morning at some point about how Client R was going to get  
8 to the doctor, right?

9 A Correct.

10 Q Who formulated that plan?

11 A I did.

12 Q Okay, and what was the plan?

13 A The plan was that one of the staff at the house was going  
14 to go relieve Jessica from her house, and she was going to come  
15 over and pick him up and take him to the doctor.

16 Q And that plan was announced to everybody that morning at  
17 that time, correct?

18 A That's correct.

19 Q Okay. And anything else -- and so you are the one who  
20 gave the instructions to Alicia Sale that "You are going to go  
21 get Jessica."

22 A Correct.

23 Q Did you talk to Jessica as well?

24 A Yes.

25 Q Okay, when did you talk to her?

1 A As soon as I had asked the staff if they had contacted her  
2 yet to make arrangements to go to the doctor.

3 Q And what did you say to Jessica?

4 A I told her that the client was requesting to go to the  
5 doctor and that I needed her to come over here so I was sending  
6 one of her staff over.

7 Q Okay. Anything else in particular said to Alicia about  
8 her directive to go relieve Jessica?

9 A Not that I am aware of.

10 Q Was there any discussion about what -- did you see what  
11 Alicia was doing that morning when you formulated the plan that  
12 she was going to go over and -- were you aware of what Alicia  
13 was doing that morning after you announced the plan?

14 A I am not sure I know what you mean.

15 Q Are you aware that she was servicing clients?

16 A Yes.

17 Q Okay. Did anybody tell her to stop that?

18 A To stop working?

19 Q To stop servicing her clients there. You told her to go  
20 to the doctor and she was servicing the clients. Everybody  
21 said, "Stop servicing those clients and go to the doctor right  
22 now."

23 A Alicia couldn't take them to the clients -- we had to get  
24 Jessica --

25 Q I mean, to go get Jessica right now.

1 A Correct.

2 Q Did anybody say that? "You stop taking care of these  
3 clients and you get in your car right now and you get over to  
4 Jessica right now."

5 A No. We made the arrangements while I was standing there.  
6 As soon as R-xxx said -- I'm sorry -- R said he was not feeling  
7 well, we made arrangements.

8 Q And how long did you -- were you in the home after the  
9 plan was hatched?

10 A Probably about ten more minutes.

11 Q And -- and all of that time, Alicia was continuing to work  
12 with the client, correct?

13 A I believe so.

14 Q Without any instruction to do anything differently?

15 A Correct.

16 Q Okay, and, umm, as Alicia -- did she leave while you were  
17 there?

18 A I am not -- I don't remember exactly what time she left,  
19 whether I was still there or not. The plan was put in motion.

20 Q Do you know whether she was told that she wasn't going to  
21 return to that house the next day?

22 A No, I don't now if that was said during that time or not.

23 Q Well, do you know if she was told that she wasn't coming  
24 back to that house that day?

25 A No -- I don't know.

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**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 19**

In the Matter of:

KITSAP TENANT SUPPORT SERVICES,  
INC.,

Respondent,

and

WASHINGTON FEDERATION OF STATE  
EMPLOYEES, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 28, AFL-CIO,

Charging Party.

Cases: 19-CA-74715  
19-CA-79006  
19-CA-82869  
19-CA-86006  
19-CA-88935  
19-CA-88938  
19-CA-90108  
19-CA-96118  
19-CA-99659

The above-entitled matter came on for further hearing pursuant to adjournment, before **Administrative Law Judge, JAY R. POLLACK**, at the National Labor Relations Board, Region 19, Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on Friday, September 20<sup>th</sup>, 2013 at 8:58 a.m.

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1 Q Support?

2 A No, not at all.

3 Q Would you have made the same decision regarding Mr. Owens  
4 if the Union were not in the picture?

5 A I made the same decision, yes.

6 Q Now, I'm gonna lump Alicia Sales and Hannah Gates  
7 together, if I may.

8 A Okay.

9 Q At the time you made the decision to terminate Ms. Sales  
10 and Ms. Gates, were you aware of their Union support?

11 A They were on the flyer as well, yes.

12 Q Other than that, were you aware of any support or activity  
13 that they engaged --

14 A No, not from either of those two, no.

15 Q Did that, did their picture appearing on the flyer,  
16 ostensibly they're supporting the Union, did that have any,  
17 have any bearing upon the decision to terminate?

18 A It did not. Excuse me, it did not.

19 Q If there had been no Union activity, would you have made,  
20 reached the same decision as to Ms. Sales and Ms. Gates?

21 A Most definitely, yes.

22 Q Bonnie Minor, we've talked about.

23 A Yes.

24 Q At the time you made the decision to terminate, I believe  
25 your testimony was around noon on December 7<sup>th</sup>, --

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1 A Yes.

2 Q -- were you aware of Ms. Minor's any Union and supporter  
3 activity?

4 A No, with her, I did not know.

5 Q If the Union were not in the picture, there were no Union  
6 support activity, would you have made the same decision as to  
7 Ms. Minor?

8 A Yes, I would have made the same choice.

9 Q Ms. Johnnie Driskell?

10 A Yes.

11 Q Were you aware that she was a supporter of the Union?

12 A Yes, she was on the bargaining team.

13 Q Her picture was also on the flyer?

14 A Yes.

15 Q Now did that Union support or membership in the bargaining  
16 team have any bearing or affect on the decisions you made  
17 regarding Ms. Driskell?

18 A No, not at all.

19 Q And would you have made the same decisions regardless of  
20 the Union being on the scene?

21 A Definitely, yes.

22 Q And Gary Martell?

23 A Yes. He was on the bargaining team?

24 A He was, yes.

25 Q I don't remember, was his picture on the flyer?

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1 talking, visiting a client when you're off shift and talking  
2 about personal matters?

3 A Correct.

4 Q And as to Ms. Hennings, the time you made decisions  
5 regarding Ms. Hennings, and I'm not talking about the initial  
6 head of household change in November of 2011. At the time that  
7 you made those decisions of, regarding Ms. Hennings, were you  
8 aware of her Union support or activity?

9 A I was, yes. She was on the bargaining team.

10 Q Was her picture also on the flyer?

11 A Yes, it was.

12 Q Now did that Union support or activity have any bearing or  
13 affect on your decision?

14 A None whatsoever.

15 Q Would you have made the same decision even if the Union  
16 was not on the scene?

17 A Definitely, yes.

18 Q Now was, Ms. Hennings is still employed?

19 A She is, yes.

20 Q And she's working with, if my memory serves me, as a  
21 graveyard caregiver?

22 A Yes, that's correct.

23 Q Okay. Have you ever had any difficulty with the type of  
24 care Ms. Hennings' provides?

25 A My only concern with her care was when she was using

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1 Q And did that failure to take responsibility come into play  
2 in your decision with Mr. Owens?

3 A Without a doubt, yes.

4 Q Based upon his, his responses to you, do you think, would  
5 you think at that time that Mr. Owens could be successfully  
6 retrained?

7 A I didn't think so. I felt he didn't care.

8 Q Now with Ms. Sales and Ms. Gates, did they accept  
9 responsibility of acknowledge problems with the way they dealt  
10 with their client, was his name "R?"

11 A Client "R," yes. They did not. They changed their story  
12 a couple of times actually, but not one time did they say, boy,  
13 that was a bad decision or how could we have done that  
14 differently or if that comes up again, how could we, how can we  
15 get him a ride.

16 Q And did the changing of their story, was that considered  
17 important by you in the decision that you made?

18 A Most definitely.

19 Q And did the fact that they did not take responsibility or  
20 acknowledge errors, did that come into play?

21 A Definitely, yes, it was very concerning.

22 Q Is the same type of questions regarding Bonnie Minor, did  
23 she ever acknowledge that what she did in talking to the client  
24 about the cancelling the party and that you yelled at her, did  
25 she ever acknowledge that was wrong?

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1 A Not one time, no.

2 Q Did that come into play?

3 A Yes, most definitely.

4 Q And Johnnie Driskell, Johnnie Driskell was a long term  
5 employee?

6 A Yeah, she was.

7 Q And during the discussions you had with Ms. Driskell, did  
8 she ever indicate to you that there was an error or fault on  
9 her part in the way she dealt with the mandatory reporter --

10 A No, not at all.

11 Q And did that come into play with your decision as to Ms.  
12 Driskell?

13 A Yes, without a doubt.

14 Q And if I've asked it before, I apologize, but as to Gary  
15 Martell, during that course, did he ever acknowledge that there  
16 was any fault or culpability in a mistake on discipline?

17 A He did say he dropped the ball, so that was his, that was  
18 his quote, that he had dropped the ball, but he gave me no  
19 remedy. He offered no remedy and as, as to this day, the, his  
20 portion of the narratives and financials weren't completed.

21 Q And when he said he dropped the ball --

22 A Right.

23 Q -- what did that relate to?

24 A Him not doing his work. He just said that, you know, I  
25 was asking for why this would happen, thinking that there was a

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1519

1 in each year and the Union had, had a public disclosure request  
2 and they, so basically they had our, our books, where our money  
3 went. We have to do what's called a cost report to the state  
4 each year and let them know where the dollars are spent. We  
5 have to let them know how much we spent on staff wages, on  
6 admin, on cars, and so basically we need to show exactly where  
7 every dollar went so I spent, we spent, maybe ten or fifteen  
8 hours going through that cost report with the Union, line-by-  
9 line, them asking what is this, this says, for example, this  
10 says administrative wages, what does this mean? And I would  
11 say this is all the administrative wages. And, I was met with  
12 a lot of resistance. As I started answering questions, I was  
13 getting head shakes and Mr. Tharp sat across the table and he  
14 kept saying, "You guys are cooking the books." He'd make that  
15 motion, he did it several times. Did it in front of, in front  
16 of the bargaining unit, the bargaining unit which is my own  
17 employees, so he's telling them that we're cooking the books,  
18 he referred to that, we keep a second set of books, he said, "I  
19 was told you keep another set of books, the fake books." So  
20 he, that was difficult. I'm explaining, I'm explaining where  
21 that's, where our money is going and I have somebody that's  
22 telling me that that's not true.

23 Q Okay. This was done in front of the employees on the  
24 bargaining team?

25 A Yeah, I believe, we had five bargaining unit employees

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1 there, so yes.

2 Q And so he told you that you had a double set of books --

3 A Right.

4 Q -- before your employees?

5 A Correct.

6 Q And he told you several times that you were cooking the

7 books and made a motion of somebody stirring in a bowl?

8 A Yeah, laughing, I mean, it was, it was like a, like

9 clowning, I guess is the very word for it.

10 Q How did you feel about that?

11 A I thought it was offensive. He was trying, trying to give

12 a, you know, I take a lot of pride in the work that we do, the

13 fact that we have no finding audits. I find that, the fact

14 that everything is kind of, there is a lot of clarity in what

15 we do and to have somebody tell me that that was a lie was

16 disappointing, offensive and, and set the, I mean, that's the

17 tone, here's me, this is my first session, so that's the tone I

18 was set with, you know.

19 Q Let me just ask the question. Does KTSS keep a double set

20 of books?

21 A Of course not.

22 Q To your knowledge, is that even capable of being done in

23 this electronic day and age?

24 A No, it would be impossible. You know, where the

25 operations review audits, the people, when we're audited, they

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1 come and sit and go through all the hours. They see all the  
2 dollars. They go through bank accounts. It would be  
3 impossible. I, keeping a double set of books is something out  
4 of 1930 to me, you know.

5 Q Let's go back and try to clarify a little bit. You  
6 contract with the State of Washington to run services, say a  
7 fee for service contract?

8 A That is correct, yes.

9 Q And am I also correct that at the end of the year, you're  
10 required to file a financial report with the State of  
11 Washington detailing where the money went and where the money  
12 was spent?

13 A That's correct, yes.

14 Q And am I also correct that the State of Washington would  
15 come out and audit the report?

16 A Yes, that's correct.

17 Q Now --

18 A It's not that they can audit, they do audit, I mean, this  
19 is, we're not under a random audit, we're, they come and audit  
20 every two years.

21 Q And let me just try to clarify. If the, and help me, the  
22 bench mark goes towards staff?

23 A Right, the ISS bench mark.

24 Q ISS?

25 A Yes.

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1 Q It's the money that goes to staff?

2 A That's correct, yes.

3 Q And that's based upon hours of service provided?

4 A That is correct, yes.

5 Q And that doesn't repay you for overtime?

6 A If they say that we get ten hours for that client, we get  
7 ten hours a day times the bench mark rate, that's it, no matter  
8 if it is overtime, sick leave, holiday, all the same.

9 Q And if at the end of the year you have received money for  
10 not provided the number of hours --

11 A Right.

12 Q -- for the ISS --

13 A Right.

14 Q -- staff rate, what do you have to do with that money?

15 A We have to give it back. So we, we would have to write a  
16 check back for whatever was left over.

17 Q Now, the, you've got the ISS rate and you've got the  
18 administrative?

19 A That's correct, yes.

20 Q And tell me again who, who is covered and who, who may be,  
21 the ISS rate may be paid to?

22 A For the ISS rate it has to be staff that, direct service  
23 staff or staff that are providing services directly to the  
24 client. An administrator can't be in ISS rate. A bookkeeper  
25 cannot be in the ISS rate. A receptionist can't be in the ISS

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1 rate. It has to be, for example, all of our direct service  
2 staff obviously are, my program managers are, I am, as well,  
3 but I can only do that if I'm providing client support, so, and  
4 that doesn't mean that I'm bathing a client, that means I'm  
5 scheduling, attending treatment team meetings, going out to the  
6 house, so we have to be direct hands on with clientele to be  
7 able to get ISS.

8 Q And may you include in the ISS human resources?

9 A We use human resources as well. Human resources also does  
10 training, so anybody that's involved in training can also be a  
11 part of the ISS.

12 Q Now is, is the administrators' costs included in the ISS?

13 A Can not be included and no, it is not.

14 Q And the chief financial officer or bookkeeper?

15 A She cannot be included and she's not.

16 Q And receptionist?

17 A Cannot be included and she's not, no, not even a  
18 percentage.

19 Q So people who do traditional office type work, support  
20 staff --

21 A Right.

22 Q -- cannot be included in ISS?

23 A They come out of the admin side.

24 Q And they are, now has the Union accused you or made  
25 statements about people being paid by ISS that are unapproved?

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1 us what that is.

2 A This is the Power Point, this is a copy of the Power Point  
3 presentation that was given at the, at the legislative hearing  
4 that I spoke of prior in my testimony, on March 7<sup>th</sup>, 2013.

5 Q And where did you obtain the Power Point presentation?

6 A I think our lobbyist presented me with a copy of it. I  
7 was there, he was there, our, we have a lobbyist that works  
8 with us during the legislative session, so he presented it to  
9 me.

10 Q And when you said you were there, do you mean you were  
11 there during the presentation?

12 A I attended the presentation along with my program  
13 coordinator, Mieka and the lobbyist, yes.

14 Q And is, what is, I've handed to you in Employer's Exhibit  
15 130, what was presented to the legislative committee?

16 A Yes, it was.

17 Q If you look at page three of that, who or what was the  
18 focus of this presentation according to the Union?

19 A As stated, it was, one company, Kitsap Tenant Support  
20 Services.

21 Q And how, how would you characterize the Power Point in the  
22 presentation?

23 A It was, it was a slam on Kitsap Tenant Support on the way  
24 we provide services and the way we spend our money.

25 Q Okay. If you look at page seven, it talks about DSH

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1 haven't, that said that the Union asked the state not to  
2 provide them funds nor have I heard any, any proof that the  
3 Union is making false statements.

4 MR. LOFLAND: That's the questions I'm beginning to ask.

5 MR. JENSEN: The document to me is irrelevant at this  
6 point.

7 JUDGE POLLACK: This is away from the bargaining table. I  
8 think it might, I think we're going too far away from the  
9 issues. I'll sustain the objection.

10 MR. LOFLAND: We will then ask this be included in the  
11 rejected exhibit file.

12 JUDGE POLLACK: All right. Employer's 130 will be placed  
13 in the rejected file.

14 **(Employer's Exhibit 130, rejected and placed in rejected**  
15 **exhibit file)**

16 Q Mr. Frey, at the bargaining table, did the representatives  
17 with the Union claim that KTSS was paying the receptionist, the  
18 CFO and the administrator out of the ISS funds?

19 A They claimed it several times and they continue to  
20 maintain that.

21 Q And this was, was that true?

22 A It is not true.

23 Q When they made those statements, did you correct them?

24 A Each and every time.

25 Q And did you show them on the financial statement where

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1 that was not correct?

2 A Yes, I did.

3 Q But then they continued to make the statements?

4 A That is correct, yes.

5 Q Did they also make the claim that the owner, the  
6 administrator, Mr. Closser, was paying himself three-to-four  
7 hundred thousand dollars out of the administrative funds?

8 A They did claim that.

9 Q Is that true?

10 A That's not true. The line items says "Administrative  
11 Costs and Salaries," and I explained that that was all of the  
12 administrative salaries.

13 Q Does Mr. Closser draw a salary, to your knowledge?

14 A He does not, no.

15 Q So the administrator costs, tell me again what the  
16 administrative costs --

17 A That line item would be all the administrative costs,  
18 including CFO, reception, staff, etc.

19 JUDGE POLLACK: And this claim about Mr. Closser, was that  
20 made during the bargaining?

21 THE WITNESS: It's been made a dozen times during  
22 bargaining.

23 JUDGE POLLACK: Okay.

24 Q BY MR. LOFLAND: And did you, during the course of  
25 bargaining, was that misapprehension by the Union corrected?

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1 A On my side?

2 Q Yes.

3 A Each time, each time I attempt to explain it.

4 Q And did your explanation, any results?

5 A I get more cooking the books when I explain it.

6 Q Mr. Tharp, during the course of a, following a meeting,  
7 discussion, did he present you with a handwritten letter?

8 A He did. Actually we, if I can explain what the meeting  
9 was?

10 Q That's what I was going to ask, please do.

11 A I had a meeting up in our, at our Port Angeles office with  
12 Ms. Hennings Lucas. I believe it was the meeting where, that  
13 she actually had the examples for me in regards to the  
14 financials, so we turned a kind of difficult meeting into a  
15 pretty positive one and she, she presented me the examples of  
16 the financials and then we had to talk about some client issues  
17 that were sensitive, confidential, so I asked Mr. Tharp to step  
18 outside while we continued the conversation and he went outside  
19 and when he came back in, he presented me with this letter.

20 Q One moment please.

21 **(Employer's Exhibit 131, marked for identification)**

22 JUDGE POLLACK: Off the record, please.

23 *[Off the record]*

24 Q Mr. Frey, I've handed you that which has been marked for  
25 identification as Employer's 131 and ask you what that is?

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1 on that, that while this was away from the bargaining table,  
2 took place during the time period of the bargaining.

3 MR. LOFLAND: It did.

4 JUDGE POLLACK: So I will receive it.

5 **(Employer's Exhibit 131, received into evidence)**

6 Q Mr. Frey, based upon your experience at the bargaining  
7 table with the Union, do you think that even to this day the  
8 Union understands KTSS's operations?

9 A I don't believe --

10 MR. FIOL: Objection.

11 MR. JENSEN: Objection.

12 JUDGE POLLACK: Overruled. I'll let it stand.

13 Q Is KTSS trying to reach a contract with the Union?

14 A Yes.

15 Q And what, what are your concerns in the negotiations that  
16 perhaps are causing difficulties?

17 A Well, I guess, obviously there is the financial part of it  
18 and the Union has come down substantially in their, original  
19 demands, but if they're not understanding or wanting to  
20 understand where our money comes and goes, then I think that's,  
21 that's a difficulty. I think the other difficulty is the  
22 Union's attempting to tell us how to, how to pick clients, how  
23 to match clients, how to house clients, what staff to use, what  
24 clients and I have to tell you, I'm not very willing to have,  
25 especially a party that doesn't understand what we do, tell me

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1 how we're gonna do business. We've been around for 40 years  
2 and we're in good standing for good reason. We continue to get  
3 clients today for good reason, because we do a good job and  
4 I'm, while I'm open minded to a contract, that contract can't  
5 tie our hands to the things that I just talked about, providing  
6 the client care.

7 Q Are you, you, KTSS, willing to continue negotiations?

8 A Without a doubt, yes.

9 MR. LOFLAND: May I have a moment, please?

10 JUDGE POLLACK: Off the record, please.

11 *[Off the record]*

12 Q Mr. Frey, shift now if we can to the circumstance in which  
13 Mr. Fiol, Counsel, came to Bremerton to look at the records.

14 A Yes.

15 Q Do you recall the dates and if not the date, the date and  
16 circumstance?

17 A I don't have the exact date, but I remember the, I  
18 remember meeting him there that morning and how the rest of the  
19 circumstance went, yes.

20 Q Okay. And tell me what the location was. Was this a  
21 storage trailer?

22 A No, it's a storage facility in Goerce (phonetic), a small  
23 little town outside the shipyard in Bremerton, about 400 units  
24 at the storage complex.

25 Q And this is a storage complex with lots of units?

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1 A There is 400 units, I think.

2 Q The kind, you open a garage door or something to that  
3 affect?

4 A Large nine foot garage door.

5 Q What time of day did Mr., did the people show up?

6 A A little after ten.

7 Q And who came?

8 A Mr. Fiol came, Elizabeth DeVleming, if I don't butcher her  
9 last name, and Ms. Lemonidis came.

10 Q And --

11 A I'm sorry, and then Mr. Jensen joined them an hour later  
12 or so.

13 Q When you, when they came, who did you have the  
14 conversations with about the material and looking at it?

15 A Mr. Fiol seemed to be the lead at the time. He approached  
16 me and we kind of talked about how the day would go.

17 Q And at that time in those conversations, was anybody else  
18 present?

19 A I don't believe so. I think I just spoke with Mr. Fiol.

20 Q Where were the others?

21 A They were, I think they were shifting cars around. They  
22 come in a couple of separate cars or they were doing something,  
23 but I was mainly talking with Mr. Fiol.

24 Q And so what, what was in the storage unit?

25 A That's where we keep all of our, our archives. We're

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1 A Yeah there was, I don't think there was any deficiencies  
2 that I made note of at that point, yes.

3 Q It was all really, would you say, discovered after Ms.  
4 Winter had an issue with the agency in which she eventually  
5 resigned?

6 A Discovered after?

7 Q Or in January, and to be clear, January of 2012?

8 A Kind of all happened the same time. I mean, it was all --

9 Q It was all --

10 A Yeah.

11 Q Okay. It was definitely after you had that meeting with  
12 Terry Owens in your office regarding the list of questions,  
13 correct? After the December --

14 A It may well have been, yeah. If that's chronologically  
15 the way it was, then yeah.

16 Q And also after the hearing here at the NLRB held January  
17 4<sup>th</sup> and 5<sup>th</sup> of 2012?

18 A Again, if that's the order, then yes.

19 Q Yes.

20 A I don't have the dates memorized, but --

21 Q Okay. I have one question on the Sale, Gates matter.

22 A Okay.

23 Q And we do have an exhibit if you want to look at it, you  
24 could. And that would be the fair thing.

25 MR. FIOL: If we could show the witness General Counsel's

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1555

1 122. I have a copy here. Court Reporter, it should be in this  
2 stack that is left over from last week.

3 [Long pause]

4 JUDGE POLLACK: Okay. Off the record.

5 [Off the record]

6 Q Now, Mr. Frey, I put that General Counsel Exhibit 122 in  
7 front of you regarding the Sale/Gates matter. If you look at  
8 it, where it says, "Notification."

9 A Yes.

10 Q You notified DDD at the Field Service at 4 p.m. on the 23<sup>rd</sup>  
11 of December, correct?

12 A That's what is written on this form. I don't know, I  
13 didn't notify them. This is written by Dawn Worthing who is  
14 one of my coordinators, yes.

15 Q Dawn Worthing, I see.

16 A That, she's, she's writing that that's when she, that she  
17 notified them, yes.

18 Q Did you notify them?

19 A I notified the CRU. I didn't, yeah, I didn't notify DDD.

20 Q Okay. And then underneath, it does show that someone  
21 notified CRU at 3:45 p.m. on December 24<sup>th</sup>?

22 A That's correct.

23 Q And that's correct?

24 A It's what's written. I don't know that that's correct. I  
25 didn't, I didn't do this form.

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1 Q And the same holds true for a staff person. If they fail  
2 to do it, they should also be disciplined, correct, if that's  
3 what it leads to?

4 A It's, we don't technically, we don't typically discipline  
5 people for having a med error. It's, like I said, there is  
6 lots of med errors. We discipline folks for, for ongoing  
7 issues with those sort of things, yes.

8 Q So there is a pattern regardless of their position though,  
9 they should receive --

10 A Yeah, there's no, there's no pattern per se, there's no  
11 rule that says that if you get three, you're disciplined or if  
12 you get four, you don't. I mean, yes, I definitely take a  
13 pattern into consideration for sure.

14 Q One last question. Bonnie Minor --

15 A Yes.

16 Q -- on December 7<sup>th</sup>, you testified that there came a time  
17 when Joy Woolworth came to your office?

18 A She called.

19 Q Called?

20 A Yeah.

21 Q I see. And made a complaint about something Bonnie said?

22 A Yeah, if my memory is right, she first told another staff  
23 who told me. I believe she told Sara. Sara came to me with  
24 the report and then I suggested that Joy give me a call and  
25 then Joy called me. I believe that's how it came down.

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1 Q And then based on that, you made, you had to contact a  
2 group of people, the team, the, what's the term you used?

3 A Treatment team. I mean, my management team, treatment  
4 team.

5 Q Treatment team, yeah. So who were the people that you  
6 contacted?

7 A About Bonnie?

8 Q About Bonnie.

9 A About the issue?

10 Q Right. The issue that Ms. Woolworth raised.

11 A Well, what I said in there is that I would investigate,  
12 would is my standard process, I don't, I didn't, I can't from  
13 memory recollect who I grabbed together, but we, yeah, we all  
14 talked about it. I mean, I would go to Mieka and say, hey,  
15 it's standard practice for me to go to her and say, hey, this  
16 happened, what do you think about this.

17 Q So did you go to Mieka that day and --

18 A Likely so, yeah.

19 Q So maybe Mieka?

20 A Sure. I, I would of, almost a hundred percent positive  
21 gone to Mieka, she's my CP program assistant, so yeah, she,  
22 would have gone to her.

23 Q The therapist seems to be always on the top of the  
24 treatment team or that tree, right?

25 A Well, it's not necessarily so. She's an important part,

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1 but keep in mind, she's not a part of the agency, so she's  
2 contracted, so although we rely on her information heavily, as  
3 far as program policies, that's ours to do deal with. She just  
4 deals with the therapeutic component, so I would go to her and  
5 say therapeutically, how is it, how do you think this affects  
6 somebody. I wouldn't say, do you think I should terminate  
7 somebody. She wouldn't make that recommendation. I would ask  
8 her, in your experience, in treatment team meetings, have you  
9 seen this staff with this client, how do they interact  
10 together.

11 Q And did you call her that day?

12 A Actually, you know, the therapist is the one that alerted  
13 me to the fact that the party had been cancelled.

14 Q But she didn't alert you to the fact that you had called  
15 and that Bonnie Minor repeated what you had said, so somehow  
16 affected, in front of a client? You didn't know, she didn't  
17 talk to you about that?

18 A Patty called me and said that in therapy that day, one of,  
19 an unrelated client, client "R", a different client "R",  
20 reported to her that the party had been cancelled and I, I  
21 believe she asked Ms. Minor, because Ms., you know, the clients  
22 come in, they do therapy on Tuesday, so every half an hour  
23 there is a therapy session with different client. If my memory  
24 is right, she talked to Ms. Minor about it and then called me  
25 about it, but I'm just not certain.

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1 Q But, but the conversation that you had with the therapist  
2 had nothing to do with what Ms. Woolworth told you about?

3 A Right.

4 Q So in addition, so she, you didn't talk to her. You may  
5 have talked to Mieka, who else on the treatment team did you  
6 talk to?

7 A I likely talked to Mieka and --

8 Q Likely, right, yes.

9 A Yeah.

10 Q Anyone else?

11 A Like I said, from memory, I can't remember who exactly I  
12 talked to. I know I talked to Kathy in Human Resource.

13 Q Kathy Grice?

14 A Yeah, yeah. I think, I believe she was involved in the  
15 meeting that I had with Ms. Minor as well. When I have those  
16 one-on-one meetings, I'll pull somebody from, somebody else in  
17 the meeting as well.

18 Q Because the chronology of events that day was there was a  
19 meeting with you, Kathy Grice and Bonnie Minor.

20 A Yeah, that's correct.

21 Q Bonnie Minor left the meeting.

22 A Right.

23 Q But then you received a call from Joy Woolworth.

24 A No, I had already met her. I'd already, in that meeting,  
25 we'd already talked about the fact that she had told the

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1 clients that I yelled at her. I already had the information  
2 from Joy.

3 Q But you didn't fire Ms. Minor at that meeting, correct?

4 A No, I, we had the meeting. That was an investigatory  
5 meeting, so, I could of, I mean, we could have made that  
6 decision at that point, but I hadn't at that point.

7 Q And then last question, anybody else that you talked to?  
8 Anyone else that you talked to?

9 A Like I said, not by memory. I gotta tell you, this is,  
10 real common practice, anything that happens in the office that  
11 I see, I'll go around to my, to the team there and say hey,  
12 what do you know about this, you know.

13 MR. FIOL: I've got nothing further.

14 MR. LOFLAND: I'm sorry, I didn't hear you.

15 MR. FIOL: Oh, that's, nothing further. I have no further  
16 questions.

17 JUDGE POLLACK: Yeah, you didn't say it, but I assume you  
18 reserve your right to cross-examine --

19 MR. FIOL: Yes, oh yes.

20 JUDGE POLLACK: -- when you have --

21 MR. FIOL: The documents, the records, sure.

22 JUDGE POLLACK: Okay.

23 MR. JENSEN: Is, is, what I was handed the night before  
24 last, a ton of documents from Mr. Lofland, one was marked E--44  
25 and has that been admitted? It's about --

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT  
SERVICES, INC.,

Employer,

and

WASHINGTON FEDERATION OF  
STATE EMPLOYEES, AMERICAN  
FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES,  
COUNCIL 28, AFL-CIO,

Petitioner.

Case Nos. 19-CA-074715  
19-CA-079006  
19-CA-082869  
19-CA-086006  
19-CA-088935  
19-CA-088938  
19-CA-090108  
19-CA-096118  
19-CA-099659

The above-entitled matter came on for hearing, pursuant to notice, before the Honorable **JAY R. POLLACK**, Administrative Law Judge, at the National Labor Relations Board, Region 19, 2966 Jackson Federal Building, James C. Sand Hearing Room, 29th Floor, 915 Second Avenue, Seattle, Washington 98714, on **Wednesday, November 13, 2013, at 9:05 a.m.**

A P P E A R A N C E S

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1 JUDGE POLLACK: You have the continuing objection.

2 MR. LOFLAND: And which I concur.

3 THE WITNESS: Yes, we did on October 21st.

4 Q BY MR. LOFLAND: And where did those take place?

5 A Bremerton at the Fairfield Inn.

6 Q And when did they begin?

7 A I think we were scheduled to start about 9:00 a.m.

8 Q And did it start about that time?

9 A We started a bit late.

10 Q And when did they conclude?

11 A About 4:35, 4:44.

12 Q All right. And describe those negotiations. How much  
13 time did the parties actually spend face to face at the table?

14 A I think, I think I have minutes that show that it was  
15 about two hours, maybe two hours and 20 minutes total of face-  
16 to-face bargaining time.

17 Q And was any progress made on reaching further agreements  
18 in that meeting?

19 A Very little.

20 Q During the course of those negotiations, did the employer  
21 present proposals to the Union?

22 A I believe we presented three.

23 MR. LOFLAND: Now, Judge, I've got three documents I'm  
24 going to give to him. Would you prefer that I mark each one  
25 separately, or put them together as one?

1 the medication, I think it stems from the author's handwriting.

2 JUDGE POLLACK: Go ahead.

3 Q BY MR. LOFLAND: I'm sorry, was your answer that those  
4 were proposals made?

5 A Yes. Yes, those were the three proposals.

6 MR. LOFLAND: All right. I move for the introduction.

7 MR. FIOL: And I've got my objection based on a  
8 continuation.

9 JUDGE POLLACK: Okay. Employer's 135 is received.

10 **(Employer Exhibit Number 135 Received into Evidence)**

11 Q BY MR. LOFLAND: Since that negotiation -- let me strike  
12 that and let me back up. How did those negotiations end?

13 A As far as how the feeling was when we ended, or?

14 Q No, was there any plans or arrangements for further  
15 negotiations or further activities between the Union and the  
16 employer?

17 A There was. And we do have a mediation date set.

18 Q All right. And so at the time the negotiations ended, was  
19 there a request for mediation or a suggestion of mediation?

20 A I can't be certain. I believe we spoke of it, but I can't  
21 remember if we talked at the end of negotiations or if we did  
22 that via email.

23 Q And at this time, do you know the date on which the  
24 further mediation is scheduled?

25 A This Friday.

1 bargaining unit employees, then go over and become CP employees  
2 and/or come back to being bargaining unit employees and vice  
3 versa.

4 A It happens. It's not a large percentage, but yes.

5 Q It's up to at least 20 percent, isn't it?

6 A I would have to check the figures. I guess it could be.

7 Q Do you remember testifying about that at the -- there was  
8 an R case hearing here, right?

9 A Yes.

10 Q January 4 and 5?

11 A Okay.

12 Q 2012.

13 A Okay.

14 Q And do you remember testifying about that interchange and  
15 the amount of it?

16 A I don't remember the testimony, no.

17 Q So if I suggested to you that you testified it was about  
18 20 percent --

19 MR. LOFLAND: I'm going to object to that, Judge. That  
20 means counsel is testifying as to what happened.

21 MR. JENSEN: May I go off the record?

22 JUDGE POLLACK: Off the record.

23 (Off the record at 10:21 a.m.)

24 MR. JENSEN: I have the representation case transcript  
25 here and it's 500-some pages. You can have all of it you want,

1 bargaining unit employees up to maybe 20 percent?

2 A Yes, that says maybe 20 percent, correct.

3 Q Okay. Mr. Frey, you testified, according to my notes and  
4 recall, that you learned about the Union's campaign in about  
5 November of 2011. Do I have that correct?

6 A I believe so, yes.

7 Q And how did you learn about that?

8 A I believe it came -- our program manager on the homecare  
9 side came to me and said that a couple of her staff had been  
10 approached by somebody representing the Union. I think at that  
11 time we thought it was possibly the SEIU as we've had  
12 experience before, and he usually mobilizes homecare, so --

13 Q Okay. And SEIU, they had a campaign at your facility a  
14 few years ago, correct?

15 A It's been, I don't know, seven years back.

16 Q Around 2006, 2007, in there?

17 A Possibly. I just don't have a date. I'm sorry.

18 Q Yeah. And who did they try to organize, just the homecare  
19 division?

20 A I don't think we really knew, to be honest with you. They  
21 were talking with both sides, I believe.

22 Q Was there ever an election or a petition filed or  
23 anything?

24 A No, I don't believe so.

25 Q Fizzled, apparently?

1 A Apparently so, yes.

2 Q Homecare, now, what's homecare versus what we've been  
3 talking about with CP and ITS and SLL?

4 A Well, all of our Kitsap Tenant as a supportive living  
5 agency, so even community protection is considered supportive  
6 living. So there's supportive living life, there's supportive  
7 living ITS, and there's supportive living PC.

8 In the '70s, they opened this program to be a training  
9 program. So tenant support side is all under the guise of  
10 training, as I've explained before. The homecare side is task-  
11 oriented. So on the homecare side if you need a meal, they  
12 cook the meal. On the tenant support side it's a training  
13 program, so we're training to cook the meal, we're training to  
14 go to work, or training to bathe. Task versus training is the  
15 easiest way to explain it.

16 Q Yeah. Would you have clients on the homecare side who are  
17 not disabled or anything like else, but just need want a --  
18 want a little assistance now and then in the home?

19 A I think that's minimizing it, saying you want a little  
20 assistance. They're usually quite disabled if they have  
21 Medicaid personal care services, so --

22 Q Oh, okay. But it's all part of the KTSS operation,  
23 homecare, as well?

24 A Homecare is run separately but, yes, we're under the same  
25 roof, under the same owner, so yes.

1 Q But -- I'm sorry, I cut you off.

2 A Under the same owner, yes.

3 Q But homecare personnel are not part of the bargaining  
4 unit, correct?

5 A They're not.

6 Q So you heard sometime in November that maybe a Union  
7 campaign was going on out there. What did you do about that,  
8 with that information?

9 A I told the administrator. I mean he was talking with the  
10 administrator and with the program manager over on the homecare  
11 side, and I believe I may have contacted Mr. Lofland as a labor  
12 but, we didn't do much else. It was just hearsay. It was, you  
13 know, I didn't have names or didn't know. Honestly, I just  
14 went on with business.

15 Q Did you formulate a plan to -- did you formulate a plan  
16 for Union avoidance at that point?

17 A I wouldn't say that, no.

18 Q But you didn't want the Union to come in.

19 A As I testified earlier, I wasn't -- I don't have any  
20 experience with unions. And what I've learned from unions I've  
21 learned from this.

22 Q So you didn't have any animosity to the idea of a Union  
23 coming in?

24 A Animosity? Again, I don't know, good or bad.

25 Q You had testified -- I think your words were you weren't

1 household with seasoned staff."

2 Q Yeah.

3 A That would have said Sarah Kimmel.

4 Q Sure. Thank you. And then on the --

5 A Well, the second -- down below would have been -- the  
6 other blank would have been Sarah Kimmel as well because she  
7 was positive behavior support specialist.

8 Q Well, there's two of them right together there with just  
9 one circle. Correct?

10 A Yes. I'm assuming that, that would be --

11 Q Yeah.

12 A -- both Sarah Kimmel.

13 Q Yeah. And then there's one more on the second page.

14 A I'm again guessing that, that would have said Carolyn  
15 Winters as well. As of that time, that's who we thought --

16 Q Okay.

17 A -- had placed some literature.

18 MR. JENSEN: Okay. I'd offer Charging Party's 12.

19 MR. LOFLAND: No objection.

20 JUDGE POLLACK: Charging --

21 MR. FIOL: No objection.

22 JUDGE POLLACK: -- Party's 12 is received.

23 **(Charging Party Exhibit Number 12 Received into Evidence)**

24 Q BY MR. JENSEN: Okay. Mr. Frey, I'm going to change  
25 gears a little bit or attention. Why was Bonnie Minor fired?

1 A She had cancelled a client party and she had also told  
2 some clients that I had screamed and yelled at her.

3 Q Okay.

4 A And as I think I testified earlier, I felt that, that was  
5 cruel.

6 Q Okay. Did you make a CRU report on her?

7 A I don't know. I can't recall.

8 Q Okay. Now, you -- so cancelling the party and -- did it  
9 take both these factors together to amount to an immediate  
10 termination, or would either one have been enough, or how did  
11 you size that up?

12 A I guess I took the scope of the whole matter.

13 Q So they were both factors?

14 A Most definitely.

15 Q Yeah. Neither one alone would have been enough, but  
16 together it was?

17 A I can't -- I don't think that's a correct statement,  
18 either.

19 Q Okay.

20 A I took both into account.

21 Q Would you have fired her if there wasn't the thing about  
22 telling clients that you'd yelled at her?

23 MR. LOFLAND: I'm going to object to the question as  
24 calling for speculation.

25 MR. JENSEN: Well, I think only he can testify whether he

1 has to speculate.

2 JUDGE POLLACK: Okay. Overruled.

3 THE WITNESS: Restate your question, please.

4 Q BY MR. JENSEN: Sure. If we take out of the equation the  
5 yelling at -- or telling clients that you yelled at her, but  
6 just cancelling the party, would that have been enough to  
7 terminate her?

8 A It depends what the reason was, if she had a legitimate  
9 reason for cancelling the party.

10 Q Well, you know what reason she gave, so based on that  
11 reasoning?

12 A Her reason appeared to be after finding out that she had  
13 yelled at the clients, that she had just done it to be mean to  
14 them. That's what I was -- I couldn't -- I can't think of any  
15 other reason. None made sense.

16 Q I'm not sure if I'm failing here. Clearly, I am failing.

17 MR. LOFLAND: I'm sorry, counsel. But if you -- once  
18 again, try to keep your voice up. I've got --

19 MR. JENSEN: I said, clearly, I'm failing here.

20 Q BY MR. JENSEN: What I'm --

21 MR. LOFLAND: I would stipulate to that from feeling  
22 badly.

23 MR. JENSEN: Okay. Very well. That's a -- it's a long  
24 line.

25 THE WITNESS: That was the more -- if I can say, if I may,

1 that's the more minimum of the two things, I mean, obviously.

2 Q BY MR. JENSEN: Which was the minimum?

3 A Cancelling the party. I was most concerned at the fact  
4 that she got off the phone and yelled at the clients --

5 Q Okay.

6 A -- not yelled. And I'm sorry. She didn't yell at the  
7 clients.

8 Q Yeah.

9 A She told the clients that I yelled at her and made kind of  
10 a big deal about how I mistreated her.

11 Q Okay. So let's now just focus on just the party  
12 cancellation.

13 A Uh-huh.

14 Q If that were the only thing, then, I take it from your  
15 testimony -- you tell me if I'm wrong.

16 A Uh-huh.

17 Q You wouldn't have terminated her for that?

18 A I may not have.

19 Q Okay. But then, from what you say, obviously then --  
20 well, I'll change that. Would you have fired her just for the  
21 interaction with the clients once she relayed to them that  
22 you'd said to her --

23 A I may have, yes.

24 Q Okay. So what do you know about who she talked to, which  
25 clients she talked to about your conversation that morning?

1 A She told me that all three of the clients were at the  
2 house, the clients that were living there. There was three  
3 people at the time, I believe.

4 Q Say that one more time.

5 A She told me that the three -- there was three clients  
6 present --

7 Q Yeah.

8 A -- if my memory is correct. It's been a while.

9 Q Three clients present when what?

10 A When I was talking to her on the phone, and when I --

11 Q Yes.

12 A -- got off -- or when she got off the phone and told these  
13 three clients.

14 Q She told you she told the three clients?

15 A That is correct. She explained -- when I went back and  
16 asked her about this, the story that she told was that she got  
17 off the phone with me and that she had told these three  
18 clients. I asked her who was there.

19 Q And what did she say she had told -- did she tell them en  
20 masse or did --

21 A They were all saying that other -- I was told that they  
22 were all at the kitchen table. The phone is right by the  
23 kitchen table.

24 Q Okay.

25 A So apparently, they are all together.

1 Q Okay. And so you didn't interview the individual client?

2 A I talked to two of them, yes.

3 Q Yeah, but when did you talk to them?

4 A Right after that.

5 Q Right after --

6 A Right after the incident happened.

7 Q How did you reach them?

8 A I called them.

9 Q Okay. So tell me what Bonnie told you about what she  
10 relayed to the clients in their presence about your  
11 conversation with Bonnie?

12 A She told the clients that I had been -- I don't know if  
13 she said screaming and yelling, but at least yelling at her.

14 Q She told you she told them that?

15 A That is correct.

16 Q When did she tell you that?

17 A When I met with her at her office.

18 Q That afternoon?

19 A I believe it was, yeah. We did it pretty quickly, so I  
20 believe it was that afternoon. Yeah.

21 Q Okay. Now, when you called the home, is that the one that  
22 was about 7:00 in the morning?

23 A Yeah. It was on -- it would have been on my way to work,  
24 so it was likely after 7:00 sometime, yes.

25 Q And I think we had a phone bill in evidence here.

1 A We got a phone record, yes.

2 Q So it is what it is, but it was a morning call and fairly  
3 early?

4 A That is correct.

5 Q Kind of breakfast time?

6 A I believe so, yes.

7 Q Do you have Bonnie's cell phone number as well?

8 A I may have.

9 Q Okay. Don't you require people to give you their cell  
10 numbers so that you can reach them?

11 A No. I don't ask anybody for their cell phone numbers  
12 unless they're willing to give it to me.

13 Q Okay. So you said you talked to two of the three clients.  
14 And so why did you pick two and not the third one?

15 A I can't remember.

16 Q Okay. And you did this by phone that morning --

17 A Uh-huh.

18 Q -- that afternoon, that morning?

19 A I believe it was, yeah. I believe so. Yes.

20 Q When did you make the first call to one of the -- well,  
21 let's go with this. You met with Bonnie.

22 A Yes.

23 Q And it was early that afternoon when she told you that she  
24 had --

25 A I'm trying to go back and I'm just trying to recall how I

1 talked to them.

2 Q Well --

3 A I may have -- I'm just trying to think of -- depending on  
4 what day of the week it was, I may have asked -- I may have  
5 talked to some of them at our office. I just can't be sure  
6 that I talked to, you know -- how I talked to them.

7 Q Okay.

8 A I'm sorry.

9 Q That's okay. But what I was trying to get to here is,  
10 just to put this in order and see what happened, you called  
11 Bonnie that morning.

12 A Yes.

13 Q And then later that afternoon, she's in your office and  
14 she tells you at that time -- she says, "Well, I told them and  
15 them that you were mean to me or yelled at me," something along  
16 those lines. Right?

17 A Right, right.

18 Q That's what caused you to call the client A and client B.  
19 Correct?

20 A I believe so. I'm just trying to think of how it went,  
21 because I became aware -- I already knew that she had done  
22 that, so I'm just --

23 Q How did you know that?

24 A I think I was contacted by that staff because there was  
25 another staff there. Ms. Woodward, I think, was her name. I'm

1 just trying to think of how that went, whether she called me or  
2 she called one of the other gals in the office and then they  
3 called me. I just can't remember. I'm sorry.

4 Q Okay. So you don't know whether the impetus to call the  
5 clients was based on Bonnie's talking to you or whether it was  
6 based on Joy Woodward talking to you?

7 A Correct. I'm sorry. I can't recall that.

8 Q When did Joy call you?

9 A I can't recall that.

10 Q Okay. So the two -- did you talk to the two clients at  
11 the house?

12 A Again, I can't remember. I can't remember whether they  
13 came into the office and I talked to them, because our clients  
14 come to the office to pick up checks to do therapy, so I don't  
15 know if they were there for that reason, I talked to them, or I  
16 called at the house. I just can't recall.

17 Q Is there a particular day of the month when they would  
18 have been coming in?

19 A They come in sometimes five days a week, especially the  
20 higher-level folks. We manage their money, so they come in to  
21 pick up checks quite often.

22 Q Okay. So you don't know where you talked to them?

23 A Unfortunately, I can't recall that.

24 Q Okay. Do you remember what time of day you talked to  
25 them?

1 A Again, I can't recall.

2 Q As to those two -- let's call it the first client -- what  
3 was your conversation with that client?

4 A I believe I just asked him what Ms. Minor said when they  
5 got off the phone and they said that -- I think the word was  
6 yelling. I think that was the word. She said that, "You  
7 yelled at her."

8 Q Okay. Any more conversation than that?

9 A I don't recall that.

10 Q And then the next client, the second one, what about that  
11 conversation?

12 A Yeah, same thing. I think the second client I talked to  
13 was one of the female clients in the house. And I think I had  
14 more of a conversation because I think it would have affected  
15 her a little bit more.

16 But she's the client that I spoke to earlier, that, you  
17 know -- we had formed a relationship, too, and it had been  
18 abused, so I just wanted to kind of let her know that that's --  
19 "I hope you know that, that didn't happen." So we talked a  
20 little bit about that. And I just -- that's why I can't  
21 remember if I did that by phone or in person. I'm more likely  
22 to talk to her about that in person, but I just can't recall  
23 that time.

24 Q Did you have that information -- well, obviously, you had  
25 that information, then, from the clients before you decided to

1 terminate Bonnie?

2 A I had -- I believe so. I had Bonnie telling me that  
3 that's what she did.

4 Q So you don't know for sure whether you had gotten  
5 information from the clients first or you didn't get it from  
6 them first?

7 A I can't tell you for sure yes or no. Sorry.

8 Q Okay.

9 (Counsel confer)

10 Q BY MR. JENSEN: Did either of these clients you speak to  
11 -- did they have jobs? Did they work?

12 A They work on and off. One of them has a job one day a  
13 week about two hours, but she only goes about 10 percent of the  
14 time. It's hard for me to tell you. They all work at some  
15 time, but it's not like they have steady employment like me or  
16 you would have. They'll do well, and work for a while, and not  
17 work. So if you're asking me if they were working at the time,  
18 I couldn't even tell you.

19 Q Okay. When you decided to terminate Bonnie --

20 A Uh-huh.

21 Q -- were you aware of what her -- how her evaluations read?

22 A No. I didn't take that into consideration.

23 Q Okay.

24 A I would have been the secondary signature, most likely, so  
25 I would have seen them, but we do those once a year, but --

1 Q Uh-huh. Okay. So you -- and you didn't remember what  
2 they said at the time?

3 A No. I did not.

4 Q And you didn't go look at them?

5 A I did not, no.

6 Q Okay. So once you talked to Bonnie earlier that afternoon  
7 and she said, "I told the people at breakfast that you were  
8 mean to me," okay --

9 A She wasn't crying like that.

10 Q Okay. Okay.

11 A But okay.

12 Q So at that point, have you made your mind up that she has  
13 to go? I mean, was that the trigger and you said "she's got to  
14 go"?

15 A No. We still talked about it.

16 Q Who did?

17 A I talked with my administrator about it. I talked with  
18 Ms. Grice about it, who was -- I believe Ms. Grice was the one  
19 that was with us at that meeting. And I also talked with Mr.  
20 Lofland.

21 Q Okay. Now, as to Grice, you say, "with us at that  
22 meeting", was it, what, you and Bonnie, at that meeting you're  
23 talking about?

24 A I believe it was me, Bonnie, and Ms. Grice.

25 Q Okay. Ms. Grice have anything to say at that meeting?

1 A No. Ms. Grice says -- she was doing HR at the time. She  
2 was listening. She was there as a third party, but I think I  
3 led the meeting.

4 Q Was Grice there when you called Mr. Closser?

5 A I don't believe so. No.

6 Q So you called Closser after you talked with Grice?

7 A I would have -- like I explained before, I would have  
8 talked to Mr. Closser, I would have brought the information to  
9 him and I would have, you know -- if he would have asked me  
10 what my recommendation was.

11 Q Yes. But my question was, then, you talked to him after  
12 you talked with Grice and Bonnie?

13 A Likely so, yeah. Ms. Grice was sitting in front of me.

14 Q Okay.

15 A Mr. Closser was not.

16 Q Did you talk with -- beyond that meeting with Bonnie, Ms.  
17 Grice, and yourself, did you talk with Grice any further about  
18 what decision you might make on Bonnie?

19 A Probably so.

20 Q You don't remember?

21 A It was two years ago.

22 Q Okay. Do you remember talking to anybody else?

23 A I would have likely talked to Ms. Middelhoven as well.

24 Q But you don't remember?

25 A Again, two years ago, I do not.

1 Q Okay. So you formed a recommendation, you thought she had  
2 to go. You called Closser and he said okay?

3 A Yeah.

4 Q Anybody of these people you talked to ever say anything  
5 along the lines like, "Are you sure? Should we give her a  
6 chance? Should we give her a warning?" Anybody speak up on  
7 her behalf at all?

8 A On just Ms. Minor, you're talking about?

9 Q Yes.

10 A No. I don't believe so.

11 Q Okay. I'm going to ask you a few questions about Ms.  
12 Johnnie Driskall.

13 A Okay.

14 Q Okay. So you had said that she was late to work on June  
15 6th, 2012. Do you remember that incident?

16 A Yeah. I don't know that. I don't have that date in front  
17 of me.

18 Q Okay.

19 A But okay, fair enough.

20 Q Well, that's the date I have from the --

21 A From the memo?

22 Q No, from the transcript, so --

23 A Okay. Fair enough.

24 Q All right. So --

25 A But I likely had the memo in front of me at the time, so

1 A Okay.

2 Q But I'm going to hand it to you, hand you a copy of that,  
3 and I'm going to have it -- I'll give you a moment just to  
4 familiarize yourself. I think you know what that is.

5 A Yeah. It's a phone record with my -- this is my phone  
6 number.

7 Q Your phone number. Yeah.

8 A That is correct. Yes.

9 Q It says "From Michael Closser", but explain when you say  
10 it's your number.

11 A It's a business account, so it's under his name.

12 Q Okay. But that's the number that you use up there at the  
13 top. Right?

14 A That's correct. Yes.

15 Q Okay. And then --

16 A Excuse me. Go ahead.

17 Q If you drop down a little ways, a couple of inches, it  
18 changes dates from 12/6 to 12/7.

19 A That's correct. Yes.

20 Q Okay. And there's a couple calls around 7:45, 7:53.

21 A Yes.

22 Q Is one of those the call you made to Bonnie that morning?

23 A It is, yes.

24 Q Which one?

25 A I believe it's the one that's marked 7:53. That's about

1 the time that I called her.

2 Q Okay. And the number there that's given -- is that  
3 peculiar to that household, then?

4 A Yeah. That's the Olympus House main number. Yes.

5 Q Okay. The number above that -- is that an Olympus House  
6 number?

7 A No. That is my administrator's phone number.

8 Q Okay. Now, let me drop down, then, below that 7:53.

9 A Uh-huh.

10 Q The next one is 8:00. Then, if you scoot over on any of  
11 those other numbers, are any of those other numbers -- take  
12 your time because there's quite a list there -- Olympus House  
13 numbers?

14 A Well, there's only one main Number at Olympus House. It  
15 would be that 415 number. It looks like there's some other  
16 household numbers, my son's phone number.

17 Q I mean, it's the only one that I detect, but I --

18 A That is correct.

19 Q Okay. And these are your phone records. Correct?

20 A That is correct. Yes.

21 Q Okay. So --

22 MR. LOFLAND: Home phone or cell phone?

23 THE WITNESS: This is cell phone.

24 MR. LOFLAND: Sorry.

25 Q BY MR. JENSEN: Okay. So does that indicate that, on

1 12/7, you did not call the client to that home about Bonnie's  
2 reaction to the call you had with Bonnie?

3 A Well, it shows that I didn't call on my cell phone.

4 Q Okay. And what other phone would you have called on?

5 A I believe I could have -- I was going to the office. I'm  
6 usually in between 8:00 and 8:30, so --

7 Q All right. Can you -- is this yours? Okay. All right.  
8 I'm going to ask a few questions now that are going to be  
9 involved with Mr. Martel.

10 A Okay.

11 Q And by the way, later this afternoon, I may come back to  
12 some questions on these other people. I'm not trying to trip  
13 you up. I'm just going to go in the order that this appeared  
14 in the transcript, so --

15 A I'm pretty easy to trip up, so --

16 Q Yeah. I'm sure. So Mr. Martel, did you -- did you know  
17 he was a union supporter before he got named to the negotiating  
18 committee?

19 A You know, I just can't recall.

20 Q Okay.

21 A I don't know. Obviously, when he was on the negotiation  
22 committee, that's --

23 Q That's a --

24 A -- pretty obvious. That's a good hint.

25 Q Yeah. Okay. But at the time you learned that he was on

1 A I can't remember how I became aware of that. I'm sorry.

2 Q Okay. How long did you spend with Client D when you were  
3 talking to him about investigating Martel?

4 A No more than a few minutes.

5 Q Okay. I want to shift now to discuss Lisa Hennings for  
6 the next few minutes.

7 A Okay. I know her as Lisa Hennings-Lucas.

8 Q Okay. You know, I don't and --

9 A Okay.

10 Q -- I just see the name on paper, so you know who I'm  
11 talking about.

12 A Fair enough, same person.

13 Q Yeah. You talked -- you moved her from one Port Angeles  
14 house to another Port Angeles house. Correct?

15 A I did. It's --

16 Q Now --

17 A -- a couple times. Yes.

18 Q I'm sorry?

19 A I believe two times, yeah.

20 Q Was two times in response to the disciplinary actions that  
21 were taking place here?

22 A No. She had moved from one house to another prior to that  
23 as well.

24 Q Okay. So I want to talk about the one here that was part  
25 of this disciplinary process. Okay?

1 A Okay.

2 Q All right. So now, you testified, I believe, that part of  
3 the problem you were having with Lisa was the number of medical  
4 errors in her household. Correct?

5 A That was one of the issues, yeah.

6 Q Yeah. And so how was moving her going to help out with  
7 that or was it?

8 A Well, she originally started at another household where  
9 she was in charge of four clients.

10 Q Uh-huh.

11 A She had some of those issues there. We trained her and  
12 then she moved to the house that had three clients. And she,  
13 you know -- keep in mind, she was making these medical mistakes  
14 as the HOH, so she was the one that was supposed to know the  
15 most about this stuff and she wasn't doing a very good job.

16 Move her to the other house, it was with two clients with  
17 more hands-on care instead of the scheduling part of the  
18 doctor's appointments, which she had a tough time with. So she  
19 went from four clients to three clients to two clients.

20 Q Four clients with, what -- at the first house she was in?

21 A That is correct. Yes.

22 Q Okay.

23 A To three clients.

24 Q But she had three --

25 A Yes. Then to two.

1 Q Thank you. The house she was at before the discipline,  
2 she had three clients?

3 A Yes. That's correct.

4 Q All right. Okay. Now --

5 A I'm sorry. The house she had before the disciplines?  
6 Originally, four clients.

7 Q Yes.

8 A The house she was at, at the time of those disciplines was  
9 three clients. Then, when she moved after those disciplines,  
10 when she was demoted, she went to a house with two clients.

11 Q Okay. Okay. Moving the house -- showing you -- no.

12 A Should I give you the names of the households so it's  
13 easier?

14 Q That'd just make it harder on an old man. Okay.

15 A More numbers.

16 Q One, two, three. Okay. So when you talked about some of  
17 her clients missing medical appointments --

18 A Correct.

19 Q Now, that was when she was at which house?

20 A At the house with four clients and the house with three  
21 clients.

22 Q Okay. The house with four clients. When did she move to  
23 the house with three clients?

24 A I don't have a date in front of me.

25 Q Go ahead and put it in context the best you can.

1 A I can't.

2 Q Was it before the union campaign?

3 A You know, I can't tell you that to be certain -- I'm sorry  
4 -- without my memo in front of me with all those dates in front  
5 of me.

6 Q Okay. Maybe I'm sorry. I'm kind of losing it here. At  
7 the house where she started having a problem with missing  
8 medical appointments, was that at the house with three clients?

9 A It started at the house with four clients.

10 Q Okay.

11 A That house was three clients, it was medication errors  
12 that the issue was.

13 Q Medication errors. The missed appointments was at the  
14 first house?

15 A And medication errors, so she had both there.

16 Q Both there.

17 A Then she moved to the second house and most of the problem  
18 at that house with three clients was missed meds.

19 Q Okay. All right. She goes to the newest house --

20 A Right.

21 Q -- now, with two clients.

22 A Right.

23 Q That happened about when?

24 A I don't know. I'm sorry. I don't remember the date.

25 Q Okay. Any problems of a particular -- any discipline

1 imposed on her since she went there?

2 A She had a discipline for not doing narratives.

3 Q Okay. Is that when you were taking pictures?

4 A That was -- no. That was at the three-client house, I  
5 believe.

6 Q Where you took pictures?

7 A I believe so, yes.

8 Q Okay. I want -- let's talk about --

9 A Pictures of the -- let me clarify -- narratives.

10 Q Exactly.

11 A Thank you.

12 Q Let's talk about the --

13 A Or lack thereof.

14 Q Okay. Let's talk about that. I think you said you went  
15 out to her house and took pictures of the narratives with your  
16 camera phone?

17 A That's correct. Yes.

18 Q Okay. And you testified to the frequency at which you  
19 engaged in such activity.

20 A Such activity of taking pictures?

21 Q Yes, with your camera phone of employee records --

22 A I don't believe I testified on how often I take pictures  
23 of records. I think that, when we talked about it, it was how  
24 much I take pictures. I take a lot of pictures of the house,  
25 not necessarily of records.

1 Q Okay. All right. But you were talking about taking  
2 pictures of things relating to KTSS and --

3 A Sure.

4 Q -- KTSS employees?

5 A If there's a broken faucet, I'll take a picture of that.  
6 If there's a trip hazard, I may take a picture of that so there  
7 would be a -- A what house?

8 A A trip hazard. So if I walk in the house and there's a  
9 trip hazard --

10 Q Yeah, okay.

11 A -- if there is a gutter that's leaking, I might take a  
12 picture of that.

13 Q Okay.

14 A If there's missing -- if there's not much food, I might  
15 take a picture of the fridge.

16 Q Okay.

17 A I might take a picture of good things as well.

18 Q Sure.

19 A If I see a meal that's fantastic, I'll take a picture of a  
20 fantastic meal and share it.

21 Q Okay. So how often -- did some of those pictures make  
22 their way into employee files?

23 A The one of the narratives, I would have put in there, yes.  
24 I might have referred some of the other ones for investigation  
25 purposes, for example the wheelchair that had the -- and I took

1 a picture of the wheelchair as well. Yeah.

2 Q And what'd you do with that picture?

3 A That went into the file as part of the investigation.

4 Q Okay. And so how often -- that's where I'm getting to --  
5 would you take pictures and put them into employee files?

6 A Not very often.

7 Q Okay. You think, if you went through them all, you think  
8 there would be, you know -- in all the files, there'd be a  
9 dozen of them?

10 A A dozen pictures?

11 Q Yeah.

12 A There might be a dozen total --

13 Q That's what I'm asking you.

14 A -- in all, yeah, maybe a dozen, maybe 25. Like I said,  
15 it's just part of an investigation. I don't take pictures of  
16 the clients, because we're not, you know, going to put a  
17 picture of somebody's face in the file, but the wheelchair that  
18 was broken, the meds in that case, you know. And I have other  
19 pictures of weapons that clients have had. I might take a  
20 picture of the knife that was used, if a client found a knife.

21 Q But that wouldn't go in an employee file, would it?

22 A That would not. That would go in the client file.

23 Q Right. Okay. So over the years, maybe 10 to 25 pictures  
24 total, somewhere?

25 A It depends how many years, but yeah.

1 Q Yeah. Okay. Well, I think you opened your files to us to  
2 records to, I think, the '90s sometime, I think.

3 A Right.

4 Q Okay.

5 A Now, keep in mind there was no camera phones back then.

6 Q Okay.

7 A So this is a new thing.

8 Q Excuse me, but when did you get a camera phone?

9 A That I used for pictures --

10 Q Sure.

11 A -- maybe -- my Blackberry, I'm trying to think, maybe  
12 seven years ago or so.

13 Q Okay. Okay. She had, you said, missed some medical  
14 appointments.

15 A We're talking about Ms. Hennings-Lucas?

16 Q Yeah.

17 A Okay.

18 Q And when you say she missed a medical appointment, what do  
19 you mean by that?

20 A She forgot to schedule the appointment. She forgot to  
21 make transit arrangements. The other part of it is that she  
22 would have an appointment and then we would find out that she  
23 forgot it. And she would say the reason she didn't do it is  
24 because she didn't have staff.

25 Q Uh-huh. Was it true sometimes she didn't have staff or do

1 you know?

2 A I know she did have staff. I know there was overlap in  
3 the house. There was overlap in the other house. And I also  
4 know that she didn't call for assistance in that matter.

5 Q When you say overlap in the house --

6 A Uh-huh.

7 Q But how would you know you had overlap back in the house  
8 at the moment she was supposed to be doing the medical  
9 appointment?

10 A Well, the overlap is there for her to schedule the  
11 appointments during the overlap. That's why we have the  
12 overlap there.

13 Q Okay.

14 A So there's an overlap in that house, I believe, about six  
15 hours a day minimum, so she would have those six hours to  
16 schedule that appointment or speak to a scheduler about it.

17 Q Did you counsel with her about that?

18 A We had several conversations about it, yes.

19 Q Do you have knowledge of what were the reasons, the  
20 various reasons, that all the appointments were missed?

21 A I gave you some examples now, but yeah.

22 Q Yeah. But were some of them rescheduled when you say  
23 missed?

24 A Some of them were rescheduled, yes.

25 Q Okay. At client's request or the doctor's request?

1 A At our request. We have a medical, you know -- we were  
2 catching the mistake. I have a gal who is my program  
3 coordinator in Port Angeles and she would catch that mistake.  
4 I was also alerted by one of the DVA case managers that we were  
5 missing appointments.

6 What was happening was that she was missing rides. And  
7 when you miss a ride with the transit system up there, you miss  
8 three rides and they kick you off the transit system. So the  
9 clients were missing their rides to the doctor's appointments.  
10 They were alerting the case manager, who was alerting us and  
11 asking us why the doctor's appointments were missed.

12 Q You -- the company has put in evidence as its Exhibit 118  
13 something that has a title of HomeTrax.

14 A HomeTrax, yes.

15 Q You know what I'm talking about?

16 A Correct.

17 Q Some kind of internal records that KTSS keeps?

18 A Yes.

19 Q Those aren't something that go in employee files, are  
20 they?

21 A Sometimes, we'll put it in there. You know, it's a  
22 database system that's new to us. We've been using it about  
23 three years. As I explained in my earlier testimony, I don't  
24 use HomeTrax. I use Memo Form (phonetic) still.

25 Q Okay. Those HomeTrax entries aren't routinely shown to

1 the employee, are they?

2 A Not routinely, no.

3 Q Okay. In your system, how current must something be in an  
4 employee's record to be relevant to assessing today whether he  
5 or she should be disciplined or the level of discipline?

6 A I think I'd go back and look at the entire file as a  
7 whole.

8 Q Okay. And I think I asked you this already, but just to  
9 make sure. In terms of your disciplinary system, your system  
10 is basically what you feel it should be at the time?

11 MR. LOFLAND: I'm sorry. I did not hear the question,  
12 counsel.

13 MR. JENSEN: Yeah. I asked him -- I said, "In terms of  
14 disciplinary system," I used the word, "It basically is what he  
15 feels is appropriate a

16 MR. LOFLAND: Thank you.

17 THE WITNESS: I guess I don't quite understand the  
18 question.

19 Q BY MR. JENSEN: Well, are there any rules, parameters,  
20 guidelines that employees have that, you know, you'll get an  
21 oral warning, a written warning? Did you have any of that  
22 that's -- let's start with that. Do you have any of that,  
23 that's binding on the company?

24 A No.

25 Q Do you have any of that that's advisory to the employees

1 or the company?

2 A No.

3 Q Okay. So it's what you want?

4 A It's what I bring to my administrator and he ultimately --  
5 me and him share that decision, but yes.

6 Q Yeah. You talked about a time when, I think, Lisa left a  
7 party, and went, and took care of some other business, and left  
8 her client with other staff. Do you remember that?

9 A Yes.

10 Q Okay. As far as you know, did the other staff agree to  
11 that hand-off?

12 A I don't. I do not know that.

13 Q Did you talk to any of them about it?

14 A I didn't. No.

15 Q Would it be wrong for them to agree to such a hand-off?

16 A Yeah. When I went back and looked at the level of  
17 supervision, it would have -- it wasn't enough supervision for  
18 the clients.

19 Q What'd you do about that, if anything?

20 A We talked about the level of supervision in the house.  
21 There's no WAC that says you have to be with this many clients.  
22 And it all depends on the clients, how the behaviors are, how  
23 they are mentally at the time. So you might be all right with  
24 three clients one day, but if one of those clients is having a  
25 rough day, then that three to one match isn't a good idea at

1 that point.

2 Q Okay. But none of that staff was up-rated or written up  
3 for accepting the hand-off?

4 A No. Definitely not. I believe we had a talk. Either I  
5 had a talk or my program coordinator had a talk about that  
6 house and how, you know, parties should go.

7 Q I want to -- I think you testified to this, but I want to  
8 clarify. Lisa up in Port Angeles and Dan -- is it Dan Lucas?

9 A Uh-huh.

10 Q Okay. Her former husband --

11 A Yes.

12 Q They're working in the same building?

13 A They're working in separate buildings.

14 Q They're not physically attached?

15 A Correct.

16 Q How far apart are they?

17 A As far as from that wall to Mr. Lofland, so 15 feet --

18 Q Okay.

19 A -- 20 feet.

20 Q Okay. Who is head of household over Lisa then?

21 A Dan is head of household over --

22 Q Okay.

23 A -- the entire complex.

24 Q Okay. How does he monitor her performance on a day-to-day  
25 basis?

1 A Well, she's on the graveyard shift now, so they see each  
2 other in passing right now, so she's off at 7:00. He comes on  
3 at 7:00.

4 Q Prior to the change -- when were they changing -- because  
5 there's a change in shift there, that implies to me.

6 A A couple months ago, yes.

7 Q Okay. Before that, what shift?

8 A She was working the day shift --

9 Q Okay.

10 A -- at one house. He was working the day shift in the  
11 other house.

12 Q How would he, as head of household -- she was no longer  
13 head of household. Right?

14 A Correct.

15 Q There is no head of household, per se, in her house.  
16 Right?

17 A There's a head of household there, yes.

18 Q It's Dan?

19 A In the household she's working in now, Dan runs the  
20 complex.

21 Q Yeah.

22 A Dan is in charge of the entire building, which is five  
23 clients.

24 Q And aren't there two buildings?

25 A There's the entire complex. How about we call it a

1 complex?

2 Q Okay. Yes.

3 A He's in charge of the entire --

4 Q Yeah.

5 A -- complex.

6 Q So he's the head of household over her there?

7 A That is correct. Yes.

8 Q Okay. How recent was their divorce before she was sent  
9 over there or do you know?

10 A I don't know the exact day. They have been separated for  
11 some time.

12 Q Okay. Now, you give me just a moment. You wrote up Lisa  
13 Hennings for scheduling?

14 A For self-scheduling, yes.

15 Q Self-scheduling. What's that mean, self-scheduling?

16 A She was preparing a schedule and not going through the  
17 scheduler.

18 Q All right. Now, how do you know that she was -- who was  
19 the schedule to cover, if you know?

20 A I guess I don't understand the question.

21 Q Who was the schedule -- whose hours was she scheduling?

22 A That household --

23 Q Okay.

24 A -- that she was working in.

25 Q Okay. So how many employees would that be?

1 A Between five and seven.

2 Q Okay. She's not head of household, though. Right?

3 A She was head of household.

4 Q Okay. She was then. Okay. All right. And so  
5 approximately when was this, if you can recall?

6 A I don't have a date. I'm sorry.

7 Q Okay. And so what was the problem? Well, I should ask  
8 you this first. What evidence do you have that she was  
9 scheduling?

10 A She was sitting on the couch, writing a schedule.

11 Q Did you pick it up and look at it?

12 A She showed it to me, yes.

13 Q Okay.

14 A She told me she was scheduling.

15 Q Did she tell you scheduling or working with Grice on  
16 scheduling?

17 A First one. She first had told me she was scheduling and  
18 then she later switched that to, "I'm working with Kathy on  
19 scheduling."

20 Q Okay. Let me -- did you talk to Grice?

21 A I did.

22 Q And what'd Grice say?

23 A She said she wasn't working with her on scheduling.

24 Q So let me ask you this. So if Lisa was making out a  
25 schedule --

1 A Uh-huh.

2 Q -- that didn't follow Grice's schedule --

3 A Uh-huh.

4 Q -- you would find out immediately when the hours came in,  
5 wouldn't you?

6 A How would I find out immediately?

7 Q Well, when the hours were reported, when this employee  
8 says, "I worked this day and these hours," and I say, "This day  
9 and these hours," if they match up with Grice, then the  
10 schedule hasn't changed. Right?

11 A That's right. Yeah.

12 Q If they don't match up with Grice's schedule, then you  
13 know something is -- somebody has done something wrong?

14 A Yes.

15 Q Okay. Was this the first time this had happened?

16 A Yes.

17 Q Okay. Now, I guess I want to know why you felt that was a  
18 problem, assuming she was scheduling?

19 A Uh-huh. Why is it a problem for her to self-schedule?

20 Q Well, when you self-schedule, it sounds to me like you're  
21 saying just scheduling yourself, but you mean to do the  
22 schedule?

23 A She was working on the schedule of the house and the  
24 problem has been historically that the HOHs were scheduling  
25 themselves and others for overtime.

1 Q Uh-huh.

2 A They also aren't necessarily aware of the hours that we  
3 have in the house. Keep in mind, the scheduling team and  
4 myself are allotted hours. We set the schedule.

5 Q Yeah.

6 A Okay?

7 Q Yeah.

8 A So we're the ones that let those staff know which hours  
9 are needed and which hours were allotted.

10 Q Okay.

11 A So Lisa isn't in a position to know what those hours are.  
12 It's not just as simple as a 7:00 to 3:00, 3:00 to 11:00, 11:00  
13 to 7:00. There's also the overlaps I spoke of.

14 Q Okay. So you're telling us here that Lisa and other HOHs  
15 should not be scheduling.

16 A That's correct. They shouldn't be.

17 Q Is that a new policy from you folks or has that been it  
18 for as far as you can remember back?

19 A It's been at least five years and, as I explained in my  
20 earlier testimony, we changed the policy because we found out  
21 the head of households were putting themselves and others into  
22 overtime.

23 Q Okay. You had -- again, we've talked about a hearing  
24 prior to the union election, at a hearing with -- probably in  
25 this room.

1 A Okay. Yes.

2 Q Okay.

3 A Are you talking about -- or you have to explain to me what  
4 the hearing was there.

5 Q Well, all right. But --

6 A Where we started this whole thing a long time ago?

7 Q Yeah. Let's back up and let me bring you up to where I  
8 want you to be.

9 A Okay.

10 Q A petition was filed.

11 A Okay.

12 Q There was a disagreement between the union and the  
13 employer on exactly who would get to vote.

14 A Right.

15 Q But two primary issues -- one was whether CP people  
16 belonged in the union?

17 A Right.

18 Q And you won that argument with the labor board. They're  
19 out of the union. The other issue was whether HOHs were  
20 supervisors under the law.

21 A That's correct. Yes.

22 Q And you litigated those two issues, and you won the CP,  
23 and you lost the schedule --

24 A Yeah.

25 Q -- or you lost the supervisor issue.

1 A Yes.

2 Q Okay. Now, in that hearing, the company presented two  
3 witnesses.

4 A Uh-huh.

5 Q You were one of them.

6 A Right.

7 Q Sarah Kimmel was the other.

8 A Right.

9 Q Okay. And in that hearing, a major issue was the  
10 authority or lack of authority that HOHs had to schedule.  
11 Right?

12 A Yes.

13 Q You testified to that.

14 A Right.

15 Q And Sarah Kimmel testified at length to that.

16 A Okay.

17 Q And you were here for all of that testimony.

18 A Okay.

19 Q And you testified that HOHs do part of the scheduling,  
20 didn't you?

21 A They work with -- they would work in scheduling in regards  
22 to -- the scheduler would call the household and say, "When is  
23 the doctor's appointments?" We wouldn't know when the doctor's  
24 appointments were necessarily. That's an example.

25 Q Would you agree that you testified that the HOHs worked

1 hand in hand with Kathy Grice to finalize the schedules for  
2 each household?

3 A I think, like I explained earlier -- I guess it's a team  
4 effort, so yeah. If hand in hand is the right word, then yeah.

5 Q Okay. And again, Kimmel was the only witness there  
6 besides yourself. And she said --

7 MR. LOFLAND: Objection.

8 JUDGE POLLACK: What's the objection?

9 MR. LOFLAND: He's testifying.

10 MR. JENSEN: I'm asking --

11 MR. LOFLAND: He can ask the question of what she  
12 testified to regarding that.

13 MR. JENSEN: And that's what I'm in the process of doing.

14 MR. LOFLAND: Well, he was going to say she testified to,  
15 and then read the testimony.

16 JUDGE POLLACK: Go ahead.

17 MR. JENSEN: Thank you.

18 Q BY MR. JENSEN: She testified, did she not, that she does  
19 the initial schedule for her house in Port Townsend?

20 A Yes. She may well have testified to that. I don't recall  
21 that.

22 Q And she also testified, did she not, that she did the same  
23 thing for her house in Bremerton?

24 A I don't know that she testified to that, but she may well  
25 have. I'll take your word for it.

1 Q No. No. That's not going to do it. I'm going to lift  
2 from the transcript and hand to you --

3 A Uh-huh.

4 Q -- pages 175, 76. You can have more if you like. And I  
5 will tell you, in particular, on 175, if you would look from  
6 page -- from line five through two on the next page, I'd  
7 appreciate it. Take all the time you would like.

8 A Now, this is whose testimony?

9 Q That's Ms. Kimmel.

10 A Okay. I just wanted to make sure.

11 Q And if you'd like, I'll show you the index that shows  
12 that.

13 A Fair enough. Okay. Thank you.

14 Q Yeah. So --

15 MR. LOFLAND: Before we ask the question, may I see the  
16 document?

17 MR. JENSEN: You bet.

18 (Counsel confer)

19 MR. LOFLAND: Okay.

20 MR. JENSEN: I need to steal back the thing.

21 Q BY MR. JENSEN: So I don't know if you need to look at it  
22 again.

23 A That's okay.

24 Q Let me know if you do, but --

25 A Thanks.

1 Q -- would you agree it's a fair statement that she  
2 testified that she does her own scheduling at her Port Angeles  
3 home?

4 A With Kathy Grice's assistance, yes. I think it states on  
5 there that she worked with her on it. She didn't do overtime.

6 Q I'm going to work with you, so I just have one page, 72.

7 A Yes.

8 Q Looking at page 175 --

9 A Right.

10 Q -- it says -- does it not say, "We have" -- this is her  
11 answer.

12 A Right.

13 Q A answer, "We have the HR person who works in the  
14 scheduling as well, but I come up with the schedule for this  
15 house, based on who we have," --

16 A Right.

17 Q -- "what the work," --

18 A Right.

19 Q -- "will work for the house."

20 A Right.

21 Q "When I first moved to Port Townsend," --

22 A Uh-huh.

23 Q -- "I faxed out a copy every week of a schedule."

24 A That's correct.

25 Q "Now, it's at the point where I'm pretty much on my own."

1 A Uh-huh.

2 Q "I make the schedule."

3 A Right.

4 Q "If there's any big changes or overtime, I call to make  
5 sure it's okay. Other than that, I'm in charge of the  
6 schedule."

7 A That's correct. Yes.

8 Q And then, she says that she does the same -- has the same  
9 responsibility in Bremerton. Correct?

10 A "It's a little less flexible because it's just a smaller  
11 amount of staff and a smaller thing." Yes. That's what it  
12 says.

13 Q And do you recall if, in her testimony, that Sarah Kimmel  
14 was asked by counsel, "Do all HOHs have the same authorities  
15 and responsibilities?" And she said, "Yes, they do."

16 A Right.

17 Q Do you agree with that?

18 A If that's what the statement says, then that's what she  
19 said.

20 Q Handing you page 173 and directing your attention to near  
21 the bottom of the page, I ask you if have a chance to go over  
22 these.

23 A Thank you.

24 Q Maybe I'll go grab it back. Would you agree there that

25 Ms. Kimmel was asked, "To the best of your knowledge, are your

1 duties, responsibilities, and authority as an HOH different  
2 from any of the other head of households?" And she said, "No."  
3 Question, "They're all the same."

4 A Right.

5 Q She says, "Yes."

6 A Right. That's what she stated in her testimony.

7 Q And do you remember Sarah Kimmel testifying that several  
8 HOHs did all their own schedules? Do you remember that?

9 A I don't recall that, no. I'm guessing you're going to  
10 show it to me now.

11 Q Yes. I am. And I'll go a bit further so we can do it all  
12 in one fell swoop here and be about done. And she further said  
13 that these head of households add or subtract employee hours at  
14 will. So I'll hand you back those pages.

15 (Counsel confer)

16 THE WITNESS: Yeah. This is the same thing I've already  
17 seen.

18 (Counsel confer)

19 Q BY MR. JENSEN: All right. So have you had a chance to  
20 look at the bottom of 175?

21 A I believe we've already looked at this once, I guess.

22 Q All right. And does that refresh your recollection that  
23 Ms. Kimmel testified that some HOHs are at the point where they  
24 will remove hours or add hours at will?

25 A She says, "There are several head of houses that I was

1 able to train with that all do their own schedule."

2 Q Yes. And then the next line, "Some have their employees  
3 sign off on it."

4 A Right.

5 Q "Some are at the point where they will remove hours or add  
6 hours at will." Correct?

7 A That's her testimony, yes.

8 Q Okay. I'm nearly done. And as I said, you were present  
9 when she testified and you heard all of her testimony, didn't  
10 you?

11 A I believe so, yes.

12 Q And you were asked in that hearing, were you not, whether  
13 you had observed all of her testimony. Correct?

14 A I may well have been.

15 Q Okay. I'm handing you pages 426 and 427.

16 (Counsel confer)

17 THE WITNESS: May I have the accompanying pages as well?

18 Q BY MR. JENSEN: I'm sorry?

19 A May I have the accompanying pages as well?

20 Q Sure. To which page? What would you like?

21 A I don't know. Give me the next half a dozen pages. How's  
22 that?

23 Q After what?

24 A 427, please.

25 Q Sure. I'll give you just what you said and tell me if you

1 like more. We're handing you 428 through 434.

2 A Thank you.

3 Q Do you need a few minutes to be fair to you?

4 A Unless I'm a speed reader, yes. I can't read six pages in  
5 10 seconds, so yes. Thank you.

6 Q I want you to take all the time you need.

7 MR. JENSEN: Can we go off the record for --

8 JUDGE POLLACK: Off the record, please.

9 (Off the record at 1:56 p.m.)

10 Q BY MR. JENSEN: Just so I don't lose my place here, which  
11 pages do you need to keep for --

12 A It depends what questions you're going to ask me.

13 Q Keep them all.

14 A Thank you.

15 Q Keep them all. We only have a couple questions left. So  
16 my question to you was that I wanted to verify that you  
17 witnessed all her testimony.

18 A Okay.

19 Q And you were asked if you endorsed it all as being true  
20 and you said yes, you did.

21 A Okay. Yes.

22 Q Okay. Do you remember Bonnie Minor testified in that  
23 case, too, for the union? Correct?

24 A She did, yes.

25 Q Do you remember her testifying that she worked on

1 schedules?

2 A I don't remember that testimony.

3 Q All right. Ms. Drinkall's testimony didn't --

4 A Driskall?

5 Q Driskall. I'm sorry. I'm fading very fast. She didn't

6 discuss scheduling on that record as far as you recall, did

7 she?

8 A I can't recall.

9 Q Okay. Mr. Owens didn't, either, did he?

10 A Again, I can't recall.

11 Q Lisa Hennings clearly did not discuss scheduling on that.

12 She didn't testify any way at all on scheduling, did she?

13 A I can't recall that, either.

14 Q Well, she did not testify, did she?

15 A Again, I --

16 MR. JENSEN: May I get a stipulation, Mr. Lofland, that

17 Lisa Hennings did not testify in the R case?

18 MR. LOFLAND: I don't have the transcript in front of me

19 and, quite honestly, I can't remember that long ago who

20 testified.

21 MR. JENSEN: I don't blame you, but I'm going to aide you.

22 I know you'd like my help.

23 JUDGE POLLACK: Off the record, please.

24 (Off the record at 2:03 p.m.)

25 MR. JENSEN: When did we go off the record?

1 MR. LOFLAND: You had asked for a stipulation.

2 MR. JENSEN: Okay.

3 JUDGE POLLACK: You asked for a stipulation.

4 MR. JENSEN: Okay. Can we get a stipulation that Lisa  
5 Hennings did not testify in the R case?

6 MR. LOFLAND: Yeah. The record of the R case transcript  
7 does not show Ms. Hennings to have testified.

8 JUDGE POLLACK: Thank you.

9 MR. JENSEN: Okay. Your Honor, I would ask if we can, I  
10 was going to say, resume for the day, but that's not what I  
11 mean.

12 JUDGE POLLACK: Okay.

13 MR. JENSEN: Conclude for the day.

14 JUDGE POLLACK: All right.

15 MR. LOFLAND: Well, are we done with this cross-  
16 examination?

17 MR. JENSEN: I am not done.

18 JUDGE POLLACK: No. He is not done, but I think what he's  
19 saying is, he can't go any further today.

20 MR. LOFLAND: Would it help to take a half-hour recess?

21 MR. JENSEN: No. I'm spent. And I actually am going to  
22 head up to the doctor's, as a matter of fact.

23 JUDGE POLLACK: All right. Can you be here at 9:00  
24 tomorrow morning?

25 MR. JENSEN: Absolutely, unless I'm under some other

1

C E R T I F I C A T I O N

2

This is to certify that the attached proceedings before the

3

National Labor Relations Board (NLRB), Region 19, Case Numbers

4

19-CA-074715, et al, Kitsap Tenant Support Services, Inc. and

5

Washington Federation of State Employers, American Federation

6

of State, County and Municipal Employees Council 28, AFL-CIO,

7

at the National Labor Relations Board, Region 19, 2966 Jackson

8

Federal Building, James C. Sand Hearing Room, 29th Floor, 915

9

Second Avenue, Seattle, Washington 98714, on Wednesday,

10

November 13, 2013, at 9:05 a.m., was held according to the

11

record, and that this is the original, complete, and true and

12

accurate transcript that has been compared to the reporting or

13

recording, accomplished at the hearing, that the exhibit files

14

have been checked for completeness and no exhibits received in

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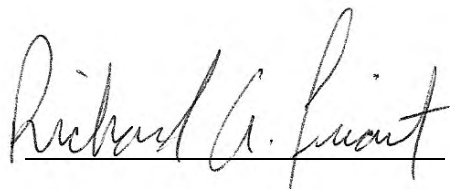
evidence or in the rejected exhibit files are missing.

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20

RICHARD FRIANT

21

Official Reporter

22

23

24

25

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

In the Matter of:

KITSAP TENANT SUPPORT  
SERVICES, INC.,

Employer,

and

WASHINGTON FEDERATION OF  
STATE EMPLOYEES, AMERICAN  
FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES,  
COUNCIL 28, AFL-CIO,

Petitioner.

Case Nos. 19-CA-074715  
19-CA-079006  
19-CA-082869  
19-CA-086006  
19-CA-088935  
19-CA-088938  
19-CA-090108  
19-CA-096118  
19-CA-099659

The above-entitled matter came on for hearing, pursuant to notice, before the Honorable **JAY R. POLLACK**, Administrative Law Judge, at the National Labor Relations Board, Region 19, 2966 Jackson Federal Building, James C. Sand Hearing Room, 29th Floor, 915 Second Avenue, Seattle, Washington 98714, on **Thursday, November 14, 2013, at 8:55 a.m.**

A P P E A R A N C E S**On behalf of the General Counsel:****RICHARD FIOL, ESQ.****ELIZABETH DEVLEMING, ESQ.**

NATIONAL LABOR RELATIONS BOARD - REGION 19  
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1                                    P R O C E E D I N G S

2            JUDGE POLLACK:    Back on the record.

3                                    CROSS-EXAMINATION

4    Q        BY MR. JENSEN:    Good morning, Mr. Frey.

5    A        Good morning.

6    Q        You talked about a meeting, I believe, where you had with  
7    Lisa where she and the client were poking each other.    Do you  
8    remember that?

9    A        It was a planning care meeting, yes.

10   Q        Okay.    And when was that?

11   A        I don't have an exact date.    It was when she was working  
12   at the 6th Street house.    That's the house with four clients.

13   Q        Okay.    No recall about the date other than that?

14   A        No.    It would have been a year ago.

15   Q        Okay.    It would have been what?

16   A        A year or so ago.    So some time ago.

17   Q        Okay.    And who all was present at that time?

18   A        Myself, case manager Deborah Terrey, she's the CRM, Ms.  
19   Hennings-Lucas, and the client that we were working with.

20   Q        You also expressed concern that Lisa was giving hugs to  
21   clients when other staff wasn't doing so.    Is that correct?

22   A        It's not the hugs that are outlined, it's the type of hug.  
23   It's full, full frontal hug, yes.

24   Q        And is there a policy, a written policy on that?

25   A        There's no written hug policy, no.

1 Q Okay. And what is the issue with the full frontal hug?

2 A In the care-giving field, that's just not appropriate for  
3 a full frontal hug. It's too much contact, and the clients can  
4 take it as a sign of something more than just what it's  
5 probably meant for.

6 Q Okay. You also expressed concern here about the number of  
7 medical errors that incurred under Lisa's, why don't we say  
8 lead supervision, whatever term. Did the -- now the errors, as  
9 I understand, the errors were made by the direct staff she's in  
10 charge to report?

11 A Some of them, yes.

12 Q Yeah, okay. Were those employees making those errors,  
13 were they disciplined for those things?

14 A No, of course not.

15 Q And the vernacular that you use on your forms, the, quote,  
16 responsible party is the one who failed to give them that, or  
17 the late med or the wrong med, that's the quote, responsible  
18 party?

19 A In that case that would be correct, yes. I believe I was  
20 talking about the responsible party for -- I can't remember if  
21 it was giving them that, or the responsible party that should  
22 have checked that the med was given. But one way or the other,  
23 yes.

24 Q Well on the forms, what I understood, looking at the  
25 forms, was the -- I can't remember, what's the title you give

1 to the person with oversight? Was that reporting party?

2 A Reporting party, yes.

3 Q Okay.

4 A And, actually, that's not the person necessarily for  
5 oversight, that's the person who reported the error. So I  
6 guess there's a couple different ways to look at those, so.

7 Q Okay. And those med errors that you've talked about, were  
8 they turned in to CRU?

9 A They wouldn't be, no.

10 Q Okay. You said you had to personally devise a safety plan  
11 to make sure that the med errors were mitigated. Do you  
12 remember that?

13 A We were asked to, yes.

14 Q Asked to by whom?

15 A Well, there was a lot of errors, so the delegating nurse  
16 had come in and had concern about it.

17 Q And so, did you do so?

18 A Yes. Basically that amounted to more oversight.

19 Q And when was that done?

20 A I don't have a date on that.

21 Q Speaking of, for a moment, to Mr. Owens again, just to let  
22 you know --

23 A Speaking of Mr. Owens?

24 Q Speaking of Mr. Owens. He never refused any orders that  
25 he's been given, has he?

1 A No, I don't believe so.

2 Q Okay. And I'll ask you a couple of questions now about  
3 Hannah Gates and Alicia Sale. And I've come to understand that  
4 you've treated them similarly, but there's a distinction  
5 between the two. How you would answer, let me know.

6 A Okay.

7 Q So, I believe you said that they've changed their stories.

8 A Yes.

9 Q Let's talk about Alicia. How and when did she change her  
10 story to you?

11 A I'd have to go back to my memo to refresh the time and  
12 dates. But basically it was changing the story about whether  
13 or not the client wanted medical attention.

14 Q What did she say initially and then how did it change is  
15 kind of what I'm after.

16 A If you want the exact version I'd have to go back to my  
17 memo. But it was between asking for medical -- to seek medical  
18 attention and whether or not he had a stomach ache, and having  
19 a stomach ache all morning. So it kind of went back and forth.  
20 And my question to them was well has he had a stomach ache all  
21 morning. And then they said -- and it was back and forth  
22 between yes and no. And has he asked for medical attention,  
23 and yes and no.

24 Q Now, you just said them. Is there any distinction between  
25 the two? Was it exactly the same?

1 A Well, they were both -- you know, I was dealing with them  
2 together. They were both working on the shift, so they were --  
3 they were kind of speaking as one at the time.

4 Q Did you ask Client R -- and we're talking about Client R  
5 in this?

6 A That's correct, yes.

7 Q Did you ask Client R if he wanted to go to the doctor?

8 A I did, yes.

9 Q Okay. Once or more than once?

10 A Several times. I asked him about the story several times.

11 Q Why'd you ask him more than once?

12 A Because I wanted to make sure that I was clear, and the  
13 ladies were telling me something else.

14 Q But, I mean, once he tells you I want to go to the doctor,  
15 doesn't that trigger get him to the doctor?

16 A Which is what we did. But I wanted to figure out what was  
17 also going on.

18 Q Okay. Now, was it important to get him to the doctor  
19 promptly?

20 A Yes.

21 Q Gary Martel, look at Gary for a moment.

22 A Okay.

23 Q You talked to Client D, I believe?

24 A Right.

25 Q If I have the clients right about him.

1 A Right.

2 Q -- are talking about clients --

3 A Right.

4 Q -- are you still able to use first names?

5 A We could use full names in our building, as long as it's  
6 not within earshot of anybody else that is outside of the  
7 person -- outside of an employee. We're all employees there,  
8 so.

9 Q Okay.

10 A If there's a guardian in the room, if there's a therapist  
11 in the room, if there's a job vendor in the room or somebody  
12 else, we revert back to using the initials now.

13 Q Okay. All right, you had referred in your testimony to  
14 the client files. What are those, sir?

15 A The client records that we keep in the office.

16 Q Okay. So if you were using the term Lisa's client files,  
17 you'd be talking about clients who are actively under Lisa's  
18 care?

19 A If that -- I don't know that they're -- if that's the  
20 right term, but okay. Lisa's -- yes, clients that Lisa was  
21 serving, their files is what I would be talking about, yes.

22 Q Okay. You had some mandatory meetings at which you asked  
23 employees to come and here your -- KTSS' side of the Union  
24 issue, correct?

25 A Yes.

1 Q Okay. And were those -- I presume it's designed so that  
2 each employee could presumably get to one meeting, correct?

3 A Yeah. I mean, they were set I believe every hour on the  
4 hour with about a 45-minute meeting, so yeah. Because people  
5 work different shifts, so folks were -- could work around that  
6 schedule.

7 Q Oh, so I think we've had testimony that there was a  
8 meeting on the 7th of December, '11 that Bonnie attended. So  
9 were they all that same day, just hour by hour by hour?

10 A I believe so. I can't remember if they were just that day  
11 or the next day. They may have well have been the next day as  
12 well.

13 Q Okay. So several during the day?

14 A Yeah, we were trying to get all the staff in there, yes.

15 Q Okay. And they were all at your facility or main office?

16 A In the -- yes.

17 Q So did you have the same schedule both days?

18 A I can't be sure of that, I'm sorry. I wasn't involved in  
19 the scheduling of it.

20 Q Do you know what time the first meeting for the day was?

21 A Maybe at -- you know, we open at -- some of us are there  
22 between 7:30 and 8:00, I'm guessing it started around 9:00.

23 Q Okay. And I think you testified employees were paid for  
24 the time there, right?

25 A That is correct.

1 reinstatement?

2 A That's correct, yes.

3 Q Are you able to tell us what your concern is about that?

4 MR. JENSEN: Your Honor, I object. I never asked any  
5 questions about this document.

6 MR. FIOL: I believe it's --

7 MR. JENSEN: This isn't any examination based on what  
8 I've --

9 MR. FIOL: If I may? Mr. Lofland put it in on I guess it  
10 was continuing his direct.

11 MR. LOFLAND: Yes.

12 MR. FIOL: Then we have laid the foundation to put it in.  
13 So there were no questions asked upon his cross-examination  
14 regarding this.

15 MR. JENSEN: He's just reopening his case for the third  
16 time on bargaining. I never touched the subject.

17 MR. LOFLAND: Make your ruling.

18 JUDGE POLLACK: Well, if they never touched the subject,  
19 then I don't think it's proper redirect.

20 MR. LOFLAND: You are right.

21 Q BY MR. LOFLAND: Let's talk now for a moment about Lisa  
22 Hennings' testimony yesterday.

23 A Okay.

24 Q Lisa worked in a household that had four clients?

25 A Originally, yes.

1 Q How is that household identified?

2 A 6th Street.

3 Q 6th Street?

4 A Yes.

5 Q And that 6th Street would be in Port Angeles?

6 A Port Angeles, that's correct, yes.

7 Q All of the testimony about Lisa would involve working in  
8 Port Angeles, wouldn't it?

9 A That is correct, yes.

10 Q She's never worked in Bremerton or any other location?

11 A Only Port Angeles.

12 Q Okay. Who recommended Lisa for her job?

13 A I believe Dan Lucas, her husband.

14 Q And at that time that he made the recommendation, were  
15 they married and living together?

16 A They weren't living together. They were split up I  
17 believe. I can't be certain, I've never been to their home,  
18 but I'm under the impression that they were split up at the  
19 time.

20 Q And at the time you assigned Ms. Hennings to the  
21 household, or the complex I believe you referred to it, in  
22 which Dan Lucas was the head of household --

23 A Right.

24 Q -- did you talk to Ms. Hennings about what to do if there  
25 were any problems?

1 A Yeah. I told her if -- she had raised concerns that, you  
2 know, my soon-to-be ex is working there. And I assured her  
3 that I see nothing but professional behavior from Mr. Lucas.  
4 And I told her that if there was any issues, that she was to  
5 bring it to me directly and I would take care of it.

6 Q And had -- has she done that?

7 A She has not, no.

8 Q And as of today, are you aware of any difficulties at that  
9 household caused -- that resulted from Ms. Hennings and Mr.  
10 Lucas working in the same complex?

11 A I do -- I am not aware of anybody. Other than Ms.  
12 Clifthorne several months back had brought that to our  
13 attention that Lisa was working there and she didn't wish to  
14 anymore. And I brought to her attention that I hadn't heard  
15 that there was any problems. I asked Dan if there was  
16 problems, and Lisa didn't really have any problems that she  
17 could note. She just said that she would rather not work  
18 there.

19 Q Let's go back to, I believe you called it the 6th Street  
20 household.

21 A That's correct.

22 Q And that's the one, when she worked there, there were four  
23 clients?

24 A Yeah. She was the head of household there.

25 Q And you transferred her, or moved her, whatever the right

1 term is, from the 6th Street household to what household?

2 A I moved her to 7th Street.

3 Q And the 7th Street was the household that had three?

4 A That is correct, yes.

5 Q Three clients?

6 A Yes.

7 Q And this transfer from 6th Street to 7th Street, when did  
8 that occur in relationship to the Union first appearing?

9 A Gosh, I just don't have a date in front of me. It  
10 happened after the Union.

11 Q Okay. And at the time she was transferred, she was head  
12 of household at the 6th Street?

13 A I moved her from HOH at 7th Street, head of household at  
14 7th Street, to head of household at 6th Street. Same position.  
15 Same pay. Same hours.

16 Q Okay. And so it went from four clients served to three  
17 clients?

18 A That is correct, yes.

19 Q And why did you move her from one household to the other?

20 A I think, as I testified earlier, she was having some  
21 problems where she was -- she had been poking clients. She was  
22 too touchy-feely. I was also concerned with the amount of  
23 medical appointments that were missed. She actually had one  
24 physician that dropped one of her clients from services because  
25 of missed appointments. So she was, she was having a tough

1 time in that house.

2 Q And was there a similar problem with the dentist besides  
3 the physician?

4 A She had a dental issue as well. And I believe that  
5 dentist -- that the dentist was, you know, about 40 miles away.  
6 So it was a -- we found out about it because she -- he missed  
7 his bus ride to the dentist, so they canceled the bus ride, he  
8 missed his dental appointment and then the case manager got  
9 wind of it and called us up and said why is, in her words, my  
10 client missing appointments.

11 Q And did you feel that moving her from a household that had  
12 four to a household that had fewer clients might enable her to  
13 do the job satisfactorily?

14 A Yeah. And I have to tell you that at the time I thought  
15 that her style -- and her style was a little more touchy --  
16 might work okay in that household. The 6th Street house where  
17 she was leaving was four guys that were accepting those touches  
18 probably for the wrong reasons. And I moved her to the 6th  
19 Street (sic) house where it was one female client who needed a  
20 little bit more compassion and care. I thought her care would  
21 be better suited there.

22 I also thought there was a lot less doctors' appointments  
23 to be made there. There was one less client. I figured it  
24 would be easier for her.

25 Q Now after that move, when she was in that household with

1 three, did the -- was she better able to do her work  
2 satisfactorily as it came to missed medications, appointments  
3 and things of that nature?

4 A Initially she was -- she did an okay job. And then as  
5 time went on, she started missing -- there was medications that  
6 were missing. And, as I think stated earlier, she wasn't --  
7 she wasn't necessarily not doing doses, but when she'd come to  
8 her paperwork meeting, she'd turn in the paperwork at the  
9 meeting with missed medications on it, which was leading us to  
10 the question well, Lisa, how come you're not, you're not seeing  
11 this. And she's saying oh they're complete. And then we'd go  
12 back and say well here's a hole here, and here's a hole here.  
13 And then she would say yeah I missed those. So it was -- we  
14 were concerned that she wasn't catching the staff that were  
15 under her making the errors.

16 Q Your problem with Lisa was not that she was making all of  
17 these medication errors, her problem was that it was her  
18 responsibility to check to determine if medication errors were  
19 made and she wasn't satisfactorily doing that?

20 A That's correct. And furthermore, she thought they were  
21 complete, which was my biggest concern, you know. And when I  
22 would ask her are they complete, at the meeting I would say are  
23 they complete, yes they're complete, we'd open them up and they  
24 weren't complete. So I didn't know if she hadn't really gone  
25 over the paperwork, or if she couldn't see the open holes. I

1 mean they're pretty obvious when there's no initials and it's  
2 not complete, so it's pretty easy to find.

3 Q And then you moved her from a household that had three to  
4 a household that had two?

5 A That is correct. And she -- I moved her there -- one of  
6 the client's she's known for a long time, she grew up in the  
7 area and she knew the client. The other client was at one of  
8 the houses she worked at before, and he needed quite a bit of  
9 peri-care and he needed help in the bathroom, and she, she did  
10 a really good job with him there, so I figured it would be a  
11 good match. Also, a lot less medical appointments in that  
12 household. And she wouldn't be head of household, so she  
13 wouldn't be responsible for going over those med sheets  
14 anymore.

15 Q And has she performed satisfactorily in that position?

16 A I think satisfactory is a good way to put it. She's --  
17 her care is good. Her treatment of the clients is good. She's  
18 had some problems with her narratives a couple times in that  
19 house. She's also had problems where she would take a client  
20 on an outing and she would have a hard time documenting the  
21 financial part of it. And she, she was kind of resistant to  
22 doing it, saying it wasn't her job.

23 I have to tell you, though, as I -- as I went back and  
24 retrained her about it, she was very open to the retraining.  
25 And since we've gone over it, it's going well.

1 Q And she is currently and remains employed?

2 A She is. I think she's doing a pretty good job right now.

3 Q Okay. Let's talk a little bit about your job. You've  
4 done for how many years now?

5 A This is -- I've been there since '92 or '93, yeah.

6 Q And during that period of time, you've observed clients in  
7 situations and circumstances, correct?

8 A Thousands, yes.

9 Q Now, if somebody were to say that you seem to be somewhat  
10 picky over people, you seem to be picky over the staff  
11 borrowing money from clients, or the way people interact, why  
12 are you -- do you seem to be so picky? What occurs? What's  
13 occurred in your experience?

14 MR. JENSEN: I object, Your Honor. Again, this isn't  
15 anything that I examined him on. And this all came out on  
16 direct.

17 JUDGE POLLACK: Overruled. Go ahead.

18 THE WITNESS: I guess in my experience over the years,  
19 I've found out that little things lead to big things. I mean,  
20 I've had some experiences of people that have been abused and  
21 neglected, inappropriate situations that have come up because  
22 of a little thing that somebody noticed. A comment that a  
23 client made loaning a client -- or a staff loaning clients  
24 money. I mean it's just a little thing, and maybe it seems  
25 nitpicky, but if you don't ask about the little thing, you

1 A I'm assuming, yes.

2 Q Yeah. Carolyn Winter.

3 A Yes.

4 Q When you hired her at KTSS, what was her -- did you hire  
5 her right into an HOH role?

6 A I believe so.

7 MR. JENSEN: I don't have any other questions.

8 JUDGE POLLACK: I have a question.

9 THE WITNESS: Go ahead.

10 JUDGE POLLACK: Yesterday you testified that there was  
11 testimony in the representation hearing that Head of Households  
12 did schedule?

13 THE WITNESS: Correct.

14 JUDGE POLLACK: Okay. So why was it wrong --

15 THE WITNESS: For her to do scheduling?

16 JUDGE POLLACK: -- for her to do the scheduling, yeah.

17 THE WITNESS: Well, just because Sarah testified that she  
18 was doing it, that's not our policy you have to understand.

19 And the other thing is, you've got to remember years ago, Head  
20 of Households did do scheduling. We're talking when I first  
21 started, it was common. Head of Households scheduled --  
22 somebody would call in sick, the Head of Households would fill  
23 that position.

24 About, like I said, six or seven years ago, we found out  
25 that Head of Households were scheduling themselves for overtime

1 and I found \$9,000 worth of fraud in one month. So we went  
2 away from that practice of having Head of Households schedule.  
3 Now, on the other side of it, the Head of Households do  
4 understand their client's schedule. So do they work with a  
5 scheduler on scheduling? Sure. The other thing I have to tell  
6 you is our scheduling position is only a position that we've  
7 had for about the last four years. We didn't have a scheduler.  
8 I would schedule my CP clients with the Head of Households. So  
9 things have changed and we've gone through the scheduling  
10 position where they have it in the HomeTrax system and they're  
11 managing those hours.

12 The other problem we have now is back years ago, we would  
13 get all these hours for clients. It would be in a pop for lack  
14 of a better word. We could use them wherever we wanted. If  
15 client J was having a hard time, I'd put client S's hours to  
16 client J. Now we're asking to manage those hours with the  
17 client in the house. So now we don't have the flexibility.  
18 Even the flexibility that we had a year ago and even when Ms.  
19 Kimmel testified, we don't have that flexibility anymore. The  
20 hours in that house have to be used in that house. The HOHs,  
21 the Head of Households, don't know what the hours are that were  
22 given in the house, so they're not in a position to do that.

23 JUDGE POLLACK: Okay. Mr. Lofland, did --

24 MR. LOFLAND: No, sir.

25 JUDGE POLLACK: Okay.

1 THE WITNESS: I hope I was clear enough on that. I'm  
2 sorry.

3 JUDGE POLLACK: Thank you.

4 THE WITNESS: You're welcome.

5 JUDGE POLLACK: I think that's it.

6 THE WITNESS: Good, I'm glad.

7 JUDGE POLLACK: Thank you.

8 MR. LOFLAND: We have other witnesses that are across the  
9 street, so if we could recess for about ten minutes, we'll make  
10 a call and have them over here.

11 JUDGE POLLACK: Okay. Off the record, please.

12 (Off the record at 10:33 a.m.)

13 JUDGE POLLACK: Back on the record.

14 Whereupon,

15 **JAMIE CALLAHAN**

16 having been first duly sworn, was called as a witness herein  
17 and was examined and testified as follows:

18 JUDGE POLLACK: The witness has been sworn.

19 Please give us your name and address for the record.

20 THE WITNESS: It's Jamie Callahan, 2207 East 24th Street,  
21 Bremerton, Washington 98310.

22 **DIRECT EXAMINATION**

23 Q BY MR. LOFLAND: Ms. Callahan, are you currently employed  
24 by Kitsap Tenant Support Services?

25 A Yes.

1 Q And when did you begin your employment with Kitsap Tenant  
2 Support Services?

3 A I believe it was March 1st, 2009.

4 Q And when you began with Kitsap Tenant Support Services,  
5 what was your position?

6 A Receptionist.

7 Q and what is your current position?

8 A I am the client resource specialist.

9 Q And how long have you held that position?

10 A I started I believe at the end of September of 2009.

11 Q Now tell us what you do in the position.

12 A My job is to manage client resources to make sure that  
13 they are being used appropriately according to State WAC and  
14 KTSS policy. Resources are not just money but also property,  
15 so Section 8 housing, vouchers, food stamps, trust accounts --  
16 any kind of resource that they might have.

17 Q And in your work at Kitsap Tenant Support Services, do you  
18 know who Lisa Hennings is?

19 A Yes.

20 Q And how do you know her?

21 A She's been at a house, so I've encountered her on multiple  
22 occasions just trying to make sure that the finances are being  
23 managed appropriately and paperwork meetings and such.

24 Q Have you ever told Lisa Hennings that it's a common  
25 practice for KTSS staff to loan a client money?

1 A No.

2 Q Is it ever appropriate for KTSS --

3 A No.

4 Q -- staff to loan a client money?

5 A No.

6 Q Did you ever tell Ms. Hennings that she needed to be  
7 careful about staff making a loan to a client because an audit  
8 was coming?

9 A No. She should always careful to not ever loan a client  
10 money regardless of the timeframe. It's just not appropriate.  
11 It goes against WAC, it goes against policy, it goes against  
12 everything that we train staff to do and to not do.

13 Q Is it ever appropriate for a staff member to make a  
14 donation to a specific client?

15 A It's really not. It encourages favoritism and can cause  
16 all kinds of problems so it's really not.

17 Q Are you familiar with a man named Gary Martel?

18 A Yes.

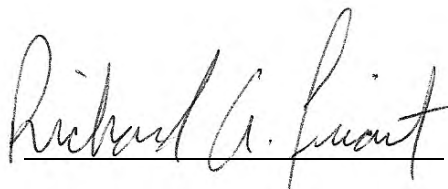
19 Q And how did you come to know Mr. Martel?

20 A He was also one of our clients that was working with  
21 finances or one of our staff, sorry, that was working with  
22 finances for a client, and so I worked with training him on how  
23 to manage those finances appropriately and what documentation  
24 we would need for those finances.

25 Q What is your overall or what is your impression of his

1                                    C E R T I F I C A T I O N

2    This is to certify that the attached proceedings before the  
3    National Labor Relations Board (NLRB), Region 19, Case Numbers  
4    19-CA-074715, et al, Kitsap Tenant Support Services, Inc. and  
5    Washington Federation of State Employers, American Federation  
6    of State, County and Municipal Employees Council 28, AFL-CIO,  
7    at the National Labor Relations Board, Region 19, 2966 Jackson  
8    Federal Building, James C. Sand Hearing Room, 29th Floor, 915  
9    Second Avenue, Seattle, Washington 98714, on Thursday, November  
10   14, 2013, at 8:55 a.m., was held according to the record, and  
11   that this is the original, complete, and true and accurate  
12   transcript that has been compared to the reporting or  
13   recording, accomplished at the hearing, that the exhibit files  
14   have been checked for completeness and no exhibits received in  
15   evidence or in the rejected exhibit files are missing.

16  
17  
18                                      
19

20                                    RICHARD FRIANT

21                                    Official Reporter  
22  
23  
24  
25

**Sarah Clifthorne - KTSS negotiations**

**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 4/23/2012 2:31 PM  
**Subject:** KTSS negotiations  
**CC:** Greg Devereux; eyounglove@ylclaw.com

Dear Mr. Lofland,

Per our telephone conversation last Friday, April 20, here is an email with my contact information, a reminder of our request for updated information, and proposed dates for bargaining. We are asking for an updated list of new employees since February 1, 2012 with contact information. Our proposed dates are:

1st bargaining session: May 30-31  
2nd bargaining session: June 5-6  
3rd bargaining session: June 26-28

Is there a space in Bremerton you prefer to meet for bargaining?

We'll have our bargaining team elected by May 11 and will let you know who they are then. They'll need to be released from work at KTSS to participate on bargaining on whatever dates we agree upon, as well as pre-bargaining training dates in advance of us meeting.

Let's plan on meeting sometime the week of May 21 without our full teams to discuss our upcoming bargaining relationship.

I look forward to confirming these dates with you via electronic communication before your return on May 14th, and talking by phone with you upon your return. Enjoy the rest of your vacation!

Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
sarahc@wfse.org  
360.481.0421 (c)  
360.352.4730 (f)  
1.800.562.6002 x 1043 (w)

GENERAL COUNSEL  
EXHIBIT NO. 2

**Sarah Clifthorne - Re: KTSS negotiations**

---

**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 5/14/2012 3:57 PM  
**Subject:** Re: KTSS negotiations

---

Dear Mr. Lofland,

Welcome back from your vacation! I have not received a response from you to my email below dated April 23, 2012. I will be out of the office Wednesday through Friday this week myself. Please let me know what times are convenient for you tomorrow, Tuesday, May 15th, to discuss the unresolved issues below.

FYI, we are no longer available to meet May 30-31.

I look forward to receiving the updated list of new employees since February 1, 2012 with contact information as you agreed to in our April 20 phone conversation.

Looking forward to a productive conversation tomorrow.

Sarah Clifthorne

>>> Sarah Clifthorne 4/23/2012 2:31 PM >>>  
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Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

**GENERAL COUNSEL**  
**EXHIBIT NO. 3**



1st bargaining session: May 30-31  
2nd bargaining session: June 5-6  
3rd bargaining session: June 26-28

Is there a space in Bremerton you prefer to meet for bargaining?

We'll have our bargaining team elected by May 11 and will let you know who they are then. They'll need to be released from work at KTSS to participate on bargaining on whatever dates we agree upon, as well as pre-bargaining training dates in advance of us meeting.

Let's plan on meeting sometime the week of May 21 without our full teams to discuss our upcoming bargaining relationship.

I look forward to confirming these dates with you via electronic communication before your return on May 14th, and talking by phone with you upon your return. Enjoy the rest of your vacation!

Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
sarahc@wfse.org  
360.481.0421 (c)  
360.352.4730 (f)  
1.800.562.6002 x 1043 (w)

5/21 - 6/2 Comm.

THE LAW OFFICES OF

Lofland &amp; Associates

GARY E. LOFLAND

May 21, 2012

Via Email: [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

GENERAL COUNSEL  
EXHIBIT NO. 5

Re: Kitsap Tenant Support Services  
Negotiations

Dear Ms. Clifthorne:

This responds, albeit belatedly, to your email of April 23<sup>rd</sup>. As I have indicated, the delay has been the result of my being out of the office, a time that had been scheduled for quite some time.

1. Updated List. Attached you will find an updated list of bargaining unit employees and their last known address.
2. Bargaining Team. KTSS is willing to grant unpaid time off to two (2) bargaining unit members who will serve with your bargaining team, one from Bremerton, one from Port Angeles.

KTSS is not willing to grant time off to others because the focus for all employees is the work they perform for the clients.

KTSS is not willing to grant time off work to allow employees to attend negotiations training. Such training must be scheduled during non-work time.

3. Location. There is a Fairfield Hotel next to the ferry terminal that would work for a meeting location. I have not determined the cost, but any such

cost should be split equally between the employer and union. If you have other suggestions, please provide them.

4. Dates for Negotiations. I suggest we set one (1) day for the initial meeting in which the union provides its written proposal. Additional meetings can be set at that time. I am not available May 30-31 because of previous commitments. I am available either June 5 or 6.
5. A Basic Understanding. I would like to establish several understandings about negotiations. The KTSS negotiating team will have the authority to negotiate and reach recommended agreements subject to the approval of the Board. Any tentative agreements reached must be in writing, initialed, and dated by the negotiator for each party. The tentative agreements reached are dependent upon reaching a full and complete agreement.
6. Information. In the past you have indicated the need to have additional information for bargaining. Understand that any such request requires time to process.

Thank you. I look forward to working with you and your negotiation team and to a successful resolution.

Sincerely,



GARY E. LOFLAND

Enclosure

cc: Client



WASHINGTON FEDERATION OF STATE EMPLOYEES  
WFSE/AFSCME of AFL-CIO  
STATE HEADQUARTERS OFFICE  
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
(360) 352-7603 λ (800) 562-6002 λ FAX (360) 352-7608

May 22, 2012

Dear Mr. Lofland,

Thank you for emailing our requested list of our bargaining unit employees at KTSS. KTSS employees elected the following five people to represent them during our negotiations for a first contract:

Johnnie Driskell  
Lisa Hennings  
Ashley Klocke  
Gary Martell  
Al Quattrocchi

Our understanding is that the elected representatives above most recently were assigned to work the following schedules at KTSS:

Monday – Friday, 7 AM to 3 PM: Ms. Driskell and Ms. Hennings  
Monday – Friday, 9 AM to 5 PM: Mr. Martell  
Monday – Friday, 11 PM to 7 AM: Mr. Quattrocchi and Ms. Klocke

KTSS employees' elected representatives are off-duty and available for bargaining Monday through Friday evenings, as well as all day/evening on Saturdays and Sundays. We are available between 6 and 9 PM on your suggested bargaining dates of June 5 and 6. We are also available Saturday and Sunday throughout June. In order to increase our mutual options for bargaining sessions, we are requesting unpaid time off for these five elected bargaining team representatives. Our bargaining team members are happy to work with KTSS administration to help find coverage for their shifts.

We are happy to meet in your suggested location of The Fairfield Inn, and to share the cost equally for two meeting rooms. Their rooms generally run from \$50 to \$100. A list of additional information needed for bargaining will be sent soon. Your May 21, 2012 letter proposes a basic understanding and references approval by a "Board". To which Board are you referring?

Both parties share a goal of providing quality care and support for KTSS' clients. Productive and efficient negotiations will benefit all KTSS employees and clients. We are requesting that KTSS employees' five elected representatives be released with unpaid time off on Monday, June 4 to prepare for our negotiations. Again, our team is happy to work with KTSS administration to help find coverage for their shifts on Monday, June 4.

Sincerely,

Sarah Clifthorne  
Public Service Program Supervisor

GENERAL COUNSEL  
EXHIBIT NO. 6

[www.wfse.org](http://www.wfse.org)

THE LAW OFFICES OF

# Lofland & Associates

GARY E. LOFLAND

May 23, 2012

Via Email: [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

GENERAL COUNSEL  
EXHIBIT NO. 7

Re: Kitsap Tenant Support Services  
Negotiations

Dear Ms. Clifthorne:

This letter follows our telephone conversation of Monday, May 21, 2012. You asked that they employer reconsider its position regarding the release of negotiation team members for training and negotiations. It also responds to your letter of May 22<sup>nd</sup>.

The position taken in my letter of May 21<sup>st</sup> was that KTSS would release two bargaining committee members for negotiations. KTSS holds on that position.

However, KTSS will consider releasing up to three (3) others for negotiations provided (1) there is adequate advance written notice; (2) client care is not jeopardized; and (3) the release does not result in additional costs to obtain coverage for the shift. If there is an additional cost (i.e., overtime to the person assigned to cover) then the release will not be permitted unless the union agrees to reimburse the employer for those costs.

I note that during the representation hearing held in Seattle employees attended in support of the union. Several who attended worked the swing and night shift and were able to voluntarily attend the hearing and work the assigned shift without difficulty. There does not seem to be a difference here.

Negotiations will take place during usual business hours, those being between 9:00 a.m. and 5:00 p.m., Monday through Friday.

I note that the responsibility for providing client care is entirely that of the employer KTSS. The union does not share that responsibility or liability. Its responsibility is to its members, not the clients.

If the union agrees to the reimbursement, please confirm in writing. Without written agreement to reimburse, release for training and negotiations will be dependent upon the factors listed above.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a trailing flourish, positioned above the printed name.

GARY E. LOFLAND

cc: Client



WASHINGTON FEDERATION OF STATE EMPLOYEES  
WFSE/AFSCME + AFL-CIO  
STATE HEADQUARTERS OFFICE  
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
(360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

May 24, 2012

Dear Mr. Lofland,

Thank you for writing that KTSS administration will consider releasing all five (5) of the elected representatives of KTSS employees with unpaid time for the purposes of negotiations. Our elected representatives agree to your requests to provide adequate advance written notice and work towards not jeopardizing client care. We cannot agree, however, to our Union paying for additional costs. We have offered to help KTSS obtain coverage for the shift, and our bargaining team members will endeavor to suggest substitutes that do not result in additional costs such as overtime.

Your May 23, 2012 letter unilaterally states that "negotiations will take place during usual business hours, those being between 9:00 and 5:00 p.m., Monday through Friday", but without KTSS agreeing to unpaid time for the five (5) elected representatives of KTSS' employees, we cannot agree to these constraints on the selection of our bargaining team. An employer "cannot simultaneously demand that bargaining take place during work hours and refuse reasonable unpaid leave requests" (343 NLRB 70, 343 NLRB 571, 2004). Additionally, the NLRB has found that an "employer's refusal to meet with union bargaining committee during nonworking hours, while simultaneously refusing to grant employee members of committee unpaid leave to attend bargaining sessions during working hours, [is] unlawful interference with employees' selection of their bargaining representatives" (435 F.3d 352, 369 U.S.App.D.C. 240, 2006). Alternatively, all five (5) of KTSS employees' elected representatives can be present for negotiations without impact on their work schedules during the evenings and on weekends.

There was an error in the work shift schedule I sent in my May 22, 2012 letter. Below is a corrected assigned work schedules for KTSS employees' five (5) elected representatives:

Monday – Friday, 7 AM to 3 PM: Ms. Driskell and Ms. Hennings

Monday – Friday, 9 AM to 5 PM: Mr. Martell

Monday – Friday, 11 PM to 7 AM: Ms. Klocke

Mon., Wed., and Fri., 11 PM to 7 AM: Mr. Quattrocchi

My question regarding to which "Board" you were referring in your May 21, 2012 letter is still unanswered. Please provide clarification so that I may promptly respond to your proposal regarding a basic understanding between both parties. I look forward to a speedy resolution of these matters so we can make arrangements for meeting June 5/6 per your proposal.

Sincerely,

*[sent w/o signature to avoid delay]*

Sarah Clifthorne  
Public Service Program Supervisor

GENERAL COUNSEL  
EXHIBIT NO. 8

[www.wfse.org](http://www.wfse.org)

**Sarah Clifthorne - request for information**

---

**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 6/1/2012 4:09 PM  
**Subject:** request for information  
**Attachments:** ltr to KTSS request for info re barg 20120601.pdf

---

Hello Mr. Lofland,

I have not received a response to my May 22, 2012 letter regarding bargaining dates. Please let me know as soon as possible whether KTSS administration prefers bargaining weekends and evenings, or will guarantee leave without pay for our five elected bargaining team members so we can bargain during the weekdays. As offered previously, our bargaining team is happy to work with KTSS administration to help find coverage for their shifts if the weekdays are preferable for KTSS. Attached is our request for information to assist with negotiations.

Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
360.481.0421 (c)  
360.352.4730 (f)  
1.800.562.6002 (w)

GENERAL COUNSEL  
EXHIBIT NO. 9



WASHINGTON FEDERATION OF STATE EMPLOYEES  
WFSE/AFSCME +AFL-CIO  
STATE HEADQUARTERS OFFICE  
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
(360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

May 22, 2012

Dear Mr. Lofland,

WFSE/AFSCME Council 28 is requesting a copy of the following information:

- Organizational chart
- Current employee list with job class, work location, date of hire, and pay level, including employees currently working in more than one different program (CP, ITS, SL, OPSL)
- List of job classes
- Copy of current employee schedule that includes house name and shift information
- List of each employee's actual paid time off (PTO) accrual rates, vacation, personal, etc.
- List of overtime paid to staff in last year and how much each employee got in overtime
- Any/all employee transfers, promotions, and movement in/out of the bargaining unit since 12/11/11
- Job descriptions and memos about job expectations
- Current Employer handbook
- All memos or written material on policies and procedures, rules and guidelines for employees working at KTSS
- Information on current disciplinary procedures, process, forms
- Information on job evaluations, including process and forms used
- Information on all benefit plans including health care, dental, vision, and 401k, including the number of employees enrolled in each program.
- History of health, dental, and vision insurance cost for employees/employer (5 years)
- History of wages and raises for employees (5 years)
- Information on training programs and requirements for staff, including all training records for employees dating back to 12/1/11
- Information on all payments received from the State.

WFSE makes this request because the information sought has been deemed relevant to our negotiations, and therefore necessary in the union's proper performance of its duties as KTSS employees' exclusive bargaining representative. Please let me know if you have any questions regarding the requested information.

Sincerely,


[sent without signature to avoid delay]

Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28

[www.wfse.org](http://www.wfse.org)

GENERAL COUNSEL  
EXHIBIT NO. 10

THE LAW OFFICES OF

 Lofland & Associates

GARY E. LOFLAND

June 1, 2012

Via Email: [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

GENERAL COUNSEL  
EXHIBIT NO. 11

Re: Kitsap Tenant Support Services  
Negotiations  
Bargaining Team Release

Dear Ms. Clifthorne:

This responds to your letter of May 24, 2012.

Once again, KTSS will release two (2) bargaining team members to attend negotiations. The release of the two is without conditions or restrictions except adequate notice. It will release up to three others to attend negotiations provided (1) there is adequate advance written notice; (2) client care is not jeopardized; and (3) the release does not result in additional costs to obtain coverage for the shift (i.e., the employee providing coverage does not incur overtime as a result of the additional hours of coverage). Note that this is consistent with the company policy. If the union agrees to pay any additional costs (i.e., overtime if incurred) then all three will be released. All time during which employees are released will be unpaid.

Negotiations during normal business hours of between 9 am and 5 pm Monday through Friday do not impact two of the bargaining team members because their shifts are not day shifts. At least one of those employees works a second job during daytime hours. That second job has not caused him difficulty in missing his work commitments in the past.

The Board referred to is the Board of Directors of KTSS.

Because of your delay in responding to the available dates, I am no longer available on June 5 or 6. Those dates were not realistic anyway because you stated in our telephone conversation of May 21<sup>st</sup> that you had not conducted "training" of the bargaining team members, you had not made a request for information needed to develop proposals, and had not developed a written proposal.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the printed name.

GARY E. LOFLAND

cc: Client





WASHINGTON FEDERATION OF STATE EMPLOYEES  
 WFSE/AFSCME + AFL-CIO  
 STATE HEADQUARTERS OFFICE  
 1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
 (360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

June 5, 2012

Dear Mr. Lofland,

On May 24 we informed you that we would be ready to negotiate on your proposed dates/times of June 5 and 6 between 9 AM and 5 PM, but wanted confirmation that KTSS was agreeing to release our members with unpaid leave. I did not receive a response from you until the evening of Thursday, June 1<sup>st</sup> in which you repeated unilateral conditions and restrictions from KTSS including adequate notice, client care, and prevention of overtime unless the union pays. These restrictions constitute "unlawful interference with employees' selection of their bargaining representatives" (343 NLRB 70, 343 NLRB 571, 2004). In this letter you also rescinded your offer to meet on June 5 and June 6.

Our team is available for negotiations without impact on KTSS work schedules during the evenings and weekends throughout June and July. To accommodate KTSS' preference of meeting Monday through Friday 9 am to 5 pm, we propose agreeing on at least eight (8) dates during June through August out of the following twenty-six (26) dates on which we can be available once our bargaining team receives approval of their leave requests from KTSS:

- Any two consecutive days between Tuesday, June 19 and Friday June 22
- Thursday June 28 and Friday, June 29
- Monday, July 2 and Tuesday, July 3
- Thursday, July 5 and Friday, July 6
- Monday, July 9 and Tuesday, July 10
- Friday, July 13
- Monday, July 23
- Thursday, August 9 and Friday, August 10
- Any two consecutive days between Monday, August 13 and Thursday, August 16
- Any two consecutive days between Tuesday, August 21 through Friday, August 24
- Thursday, August 30 and Friday, August 31

Setting the 8 dates soon will ensure that KTSS' goal of having adequate notice to find substitutions and avoid overtime costs is achieved.

We are very concerned about the harassment this week of a bargaining team member who requested unpaid leave. On May 25<sup>th</sup>, Ms. Johnnie Driskell contacted KTSS Human Resources Officer Kathy Grice via phone to let Ms. Grice know that she proposed switching shifts with a co-worker on Monday June 4<sup>th</sup>, so that Ms. Driskell would work a 4-11 pm shift instead of her regular 8-4 pm shift (because of double coverage). Ms. Driskell followed up by submitting a written notice of her shift change into the KTSS office on May 29<sup>th</sup>. Due to a lack of response by KTSS, Ms. Driskell again called Ms. Grice on May 31<sup>st</sup> and left a voicemail stating that she had managed to secure coverage by switching shifts with another co-worker and that there wouldn't be any problem coverage-wise if she took the 4th off. Ms. Grice called Ms. Driskell back on the same day (31st)

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GENERAL COUNSEL  
 EXHIBIT NO. 13

and left Ms. Driskell a voicemail thanking her for making those arrangements.

Subsequently on June 4<sup>th</sup>, while Ms. Driskell was at a union training, KTSS management called the employee covering Ms. Driskell's shift into the office (for unknown reasons) at 3 pm, an hour before her scheduled end of shift, thus causing another staff to cover for this employee who went into one hour of OT. Ms. Driskell received 7 missed calls from KTSS and was verbally reprimanded for causing a co-worker to have to go into one hour of OT, despite the fact that KTSS management's actions caused the OT. Ms. Driskell went into the KTSS office on June 5<sup>th</sup> and was again asked why she wasn't at work during her regular schedule. Ms. Driskell informed KTSS that she was at a union training, even though management was aware of the training for some time and also aware that Ms. Driskell had been elected as a bargaining representative by KTSS employees.

This clear harassment of an elected bargaining team member is completely unwarranted, and sends a disturbing message to the rest of the bargaining team, and to the entire bargaining unit, that KTSS is not bargaining in good faith.

This letter shall serve as notice that all affected members of our bargaining team are requesting unpaid leave for another meeting during 9 am to 4 pm on Monday, June 18<sup>th</sup> and shall submit a written leave request for this leave within the new few days.

We look forward to working with KTSS management to agree upon at least eight (8) days for bargaining between June and August in order for both parties to have advance notice for planning shift coverage.

Sincerely,

*[sent w/o signature to avoid delay]*

Sarah Clifthorne  
Public Service Program Supervisor

THE LAW OFFICES OF

## Lofland & Associates

GARY E. LOFLAND

June 8, 2012

*Via Email:* [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

Re: Kitsap Tenant Support Services  
Negotiations

Dear Ms. Clifthorne:

This responds to your letter of June 5, 2012.

I note your statement that you did not receive my letter until Thursday, June 1<sup>st</sup>. There is no such date. June 1<sup>st</sup> falls on a Friday, Thursday was May 31<sup>st</sup>. Easy enough to make the mistake.

I note that the Union "training" sessions take place on weekdays during normal business hours, and apparently without an adverse effects to employees who attend.

The June 5 and 6 days were not available because (1) the union was not ready, (2) had not completed "training", (3) had not made a request for information, or (4) prepared proposals. I no longer had the time available because of other matters, including trial preparation. The dates were never accepted or confirmed. The normal ebbs and flow of business and life precludes a last minute rush to accommodate your perceived needs and wants.

1

9 NORTH 11TH AVENUE  
YAKIMA, WA 98902  
(509) 452-2828  
FAX (509) 452-2858

GENERAL COUNSEL  
EXHIBIT NO. 14

To begin negotiations, I suggest that we start on July 13<sup>th</sup>. If that date is acceptable, it would be appropriate that KTSS receive the union's proposals in advance of that meeting. Additional dates will be then set at that meeting.

Your professed concern about a bargaining team member and harassment is without foundation. The person did not follow policy, did not provide sufficient advance notice, and did not identify the date of the requested leave. KTSS has indicated that it will not provide a release for "training". Such time off must be secured by the employee following established procedure. It is the bargaining team member's responsibility to do so. KTSS was not aware of the date on which the union intended to "train" employees. KTSS' responsibility is the care and safety of those clients they serve, not to facilitate training by the union.

It is unnecessary to engage in rhetoric about bargaining or not bargaining in good faith. It serves no useful purpose.

Sincerely,



GARY E. LOFLAND

cc: Client



WASHINGTON FEDERATION OF STATE EMPLOYEES  
WFSE/AFSCME • AFL-CIO  
STATE HEADQUARTERS OFFICE  
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
(360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

June 11, 2012

Dear Mr. Lofland,

We accept your proposal to meet on Friday, July 13<sup>th</sup> starting at 9 AM in Bremerton at the Fairfield Inn, assuming our five (5) elected bargaining team members affected by these meeting hours have all received confirmation prior to this date of their approval for unpaid leave. Will your office make reservations for the two meeting rooms?

Please help us understand your thoughts behind only proposing one day for bargaining for a first collective bargaining agreement. Why not set additional dates now? KTSS has repeatedly expressed concerns over potential overtime (OT) costs due to finding substitutes for our bargaining team members. From our perspective, waiting over a month to set additional dates only hinders KTSS' ability to find replacement shift coverage without incurring OT costs. We are still available on the following days to accommodate KTSS' preference of meeting Monday through Friday, and propose agreeing upon at least four (4) of these dates as soon as possible:

- Any two consecutive days between Tuesday, June 19 and Friday June 22
- Thursday June 28 and Friday, June 29
- Monday, July 2 and Tuesday, July 3
- Thursday, July 5 and Friday, July 6
- Monday, July 9 and Tuesday, July 10
- Friday, July 13 – **BARGAINING DATE SET**
- Monday, July 23
- Thursday, August 9 and Friday, August 10
- Any two consecutive days between Monday, August 13 and Thursday, August 16
- Any two consecutive days between Tuesday, August 21 through Friday, August 24
- Thursday, August 30 and Friday, August 31

GENERAL COUNSEL  
EXHIBIT NO. 15

We respectfully disagree that our concern about harassment and intimidation is without foundation. Subsequent to our June 4<sup>th</sup> letter expressing our concerns, Ms. Driskell was discriminatorily disciplined on June 6, 2012 and another of our bargaining team members, Mr. Gary Martell, was placed on administrative leave without pay on or about June 8, 2012 in retaliation for his union and or protected concerted activities.

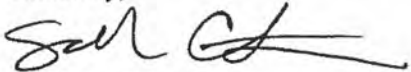
This creates a strong perception, intended or otherwise, that KTSS does not intend to bargain with us by creating a pattern of harassment of our bargaining team and of a refusal to set adequate dates for reaching mutual agreement on a first contract. We sincerely hope to be shown otherwise by KTSS taking the following actions:

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- 1.) Immediately ceasing and desisting from further harassment of our bargaining team members; and
- 2.) Agreeing as soon as possible on a reasonable number of dates to reach mutual agreement on a first contract.

Lastly, although it is not our customary practice, we will strongly consider your request to receive our proposals prior to our meeting on July 13th, if not before then per our request to meet on additional dates above. Are you proposing that KTSS will also send proposals prior to our meeting? Let's discuss next week how and when we might exchange proposals.

Sincerely,



Sarah Clifthorne  
Public Service Program Supervisor

Cc: Mike Closser, KTSS  
Alan Frey, KTSS

THE LAW OFFICES OF

 Lofland & Associates

GARY E. LOFLAND

June 11, 2012

*Via Email:* [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

Re: Kitsap Tenant Support Services  
Negotiations  
Response to Request for Information

GENERAL COUNSEL  
EXHIBIT NO. 16

Dear Ms. Clifthorne:

This responds to your request for information of May 22, 2012.

1. I have attached a copy of the current Handbook (pp. 1-93).
2. The Handbook contains:
  - The Organization Chart
  - List of Job Classes
  - Job Descriptions
  - Disciplinary Procedures
  - Vacation and Sick Leave
  - Accrual Rates
3. A list of current employees working in the bargaining unit is attached. All employees work at tenant support. The date of hire, pay rate, and location (identified by location) is delivered. Bates 94 - 96

4. A copy of the form used in performance review is attached. Bates 97
5. The benefits book and rates. Bates 98 - 107
6. Retirement Plan. Bates 108 - 109
7. Dental Plan. Bates 110 - 111
8. Visual Plan. Bates 112 - 113
9. Bargaining Unit employees enrolled. Bates 114 - 115

This response will be supplemented at a later time.

KTSS will not provide information about payments received from the state. It is under no obligation to do so.

Sincerely,

*Sent without signature to avoid delay*

GARY E. LOFLAND

Enclosures

cc: Client

THE LAW OFFICES OF

Lofland &amp; Associates

GARY E. LOFLAND

June 15, 2012

Via Email: [SaraC@wfse.org](mailto:SaraC@wfse.org)

Ms. Sarah Clifthorne  
Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St., SE, Suite 300  
Olympia, WA 98501

Re: Kitsap Tenant Support Services  
Negotiations

Dear Ms. Clifthorne:

This responds to your letter of June 11, 2012. The delay in this response results from my participation in a trial out of town.

1. The initial negotiations date of Friday, July 13, 2012, at 9:00 has been confirmed by both parties.
2. KTSS will secure and pay for the meeting room for the July 13, 2012 session. If AFSCME desires a room to use for caucuses, please secure one. The next session we will reverse the process.
3. As stated numerous times before, three employees serving on the bargaining committee will be released. The others release is dependent upon KTSS' ability to provide coverage that does not incur overtime expense for the employee providing coverage. Please identify the employees who you desire to be released without restriction. If I do not hear from you, I will assume that the three will be those working day shift.

GENERAL COUNSEL  
EXHIBIT NO. 17

1

9 NORTH 11TH AVENUE  
YAKIMA, WA 98902  
(509) 452-2828  
FAX (509) 452-2858

4. An additional bargaining date(s) will be set during the first negotiation meeting on July 13, 2012.
5. It is not my practice to provide proposals to the union until such time as the union proposals are received, evaluated and understood. KTSS is not proposing changes.
6. As stated previously, there is no harassment of bargaining team members. All employees are expected to perform satisfactorily and behave appropriately. If and when an employee does not do so, appropriate action will be taken. Employees who are on the bargaining committee do not get a free pass because they are committee members.

Sincerely,

A handwritten signature in black ink, appearing to read 'GARY E. LOFLAND', with a large, stylized initial 'G'.

GARY E. LOFLAND

cc: Client

**Sarah Clifthorne - request for leave confirmation**

---

**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 6/15/2012 4:10 PM  
**Subject:** request for leave confirmation

---

Dear Mr. Lofland,

We are very concerned that we requested leave for Ms. Driskell, and she submitted a written request to KTSS directly, on June 5 for a bargaining team meeting on Monday, June 18, but as of 4 PM today, Friday, June 15, Ms. Driskell's has not received any response from KTSS. We have thus canceled this meeting. Please explain why Ms. Driskell has not received any response to her leave request.

Thank you for agreeing to reserve the conference room at the Fairfield Inn for July 13th. We are requesting leave for Johnnie Driskell, Lisa Hennings, and Gary Martell to attend this bargaining session. Please confirm no later than June 20th that they have been granted leave without pay for this day.

We can reasonably expect that bargaining a first collective bargaining agreement will take more than one meeting. KTSS has repeatedly expressed a desire to avoid overtime costs. We continue to remain available on the following days in order to address this concern:

- Monday, July 9
- Tuesday, July 10
- Monday, July 23
- Thursday, August 9
- Friday, August 10
- Any two consecutive days between Monday, August 13 and Thursday, August 16
- Any two consecutive days between Tuesday, August 21 and Friday, August 24
- Thursday, August 30
- Friday, August 31

We look forward to productive discussions on July 13th.

Sincerely,  
Sarah

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
360.481.0421 (c)  
360.352.4730 (f)  
1.800.562.6002 (w)

GENERAL COUNSEL  
EXHIBIT NO. 18

**Sarah Clifthorne - bargaining this Friday**

---

**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 7/10/2012 2:06 PM  
**Subject:** bargaining this Friday

---

Dear Mr. Lofland,

Please let me know what room you have reserved for our meeting this Friday. We'll be there for our agreed-upon 9 AM start time. We look forward to agreeing to additional dates for our bargaining at that time to allow for maximum planning given your court appearance needs and KTSS' scheduling needs.

Take care,  
Sarah

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
360.481.0421 (c)  
360.352.4730 (f)  
1.800.562.6002 (w)

GENERAL COUNSEL  
EXHIBIT NO. 19

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Preamble

This Agreement is entered into by Kitsap Tenant Support Services and Olympic Peninsula Supportive Living Services, hereinafter referred to as the "Employer," and the Washington Federation of State Employees, AFSCME, Council 28, AFL-CIO, hereinafter referred to as the "Union."

Both parties pledge to further the mission of KTSS by continuously doing their best to improve the quality of care to all clients.

Both parties enter into this Agreement with a belief in the mutual benefits to be gained through collective bargaining and the value of communication between the Employer and the Union. This Agreement is intended to establish a basic understanding relative to personnel matters, including wages, hours and working conditions, to provide means for amicable discussions of mutual concerns regarding these subjects and ensure the fair and equitable application of the language herein.

GENERAL COUNSEL  
EXHIBIT NO. 20

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**Article 1**

**Union Recognition**

**1.1 Recognition**

The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters concerning wages, hours and other conditions of employment for all full and part-time non-supervisory employees employed by the Employer at all business locations, excluding Kitsap Home Care Division employees.

**1.2 New Classification**

In the event that new classifications appropriate to the bargaining unit are established, or the Employer opens additional facilities or locations of business employing classifications appropriate to the bargaining unit, these positions will be covered by the terms and conditions of this Agreement.

**1.3 Integrity of the Bargaining Unit**

The Employer recognizes the integrity of the bargaining unit and shall not take any action at eroding it.

**1.4 Union Exclusivity**

The Employer shall not meet, discuss, confer, subsidize, or negotiate with any other labor Union or its representatives, on matters pertaining to hours, wages, and working conditions. Nor shall the Employer negotiate with employees over their hours, wages, or working conditions except as provided herein.

**1.5 Voluntary Recognition & Neutrality**

The Employer will recognize the Union as the exclusive bargaining agent for any currently unrepresented group of employees of the Employer, upon a showing of majority support to be determined by a card check by an agreed upon neutral third party. It is the policy of the Employer to support its employees' legal right to freely choose to be

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31 represented by a union. The Employer (and its supervisors and agents) will not oppose  
32 efforts by any of its employees, including currently unrepresented employees, to be  
33 represented by a union.

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**Article 2**

**Union Rights**

**2.1 Union Activity During Working Hours**

An employee(s) shall, with the approval of her/his supervisor which shall not be unreasonably withheld, be allowed time off during that employee's scheduled shift or working hours without loss of pay to attend Labor/Management meetings, Safety Committee meetings, Union orientations, and meetings provided for under this Agreement.

**2.2 Union Business Access**

The Union will provide the Employer with a written list of staff representatives. The Employer will recognize any staff representative on the list. The Union will provide written notice of any changes within thirty (30) days of the changes. Staff representatives will be allowed access to the Employer's premises. Staff representatives may meet with bargaining unit employees at the work site on work time.

**2.3 Union Stewards**

The Union will provide the Employer with a written list of current Union stewards. The Union determines their jurisdiction and maintains the list. A steward may represent any member of a bargaining unit covered by the Union. The Employer is not required to recognize an employee as a shop steward if her or his name does not appear on the list. Union stewards will be granted reasonable time during normal working hours to prepare for, travel to and from and attend representational meetings. This includes, but is not limited to:

- A. New employee orientations;
- B. Investigatory or disciplinary meetings;
- C. Union Management Meetings; and/or

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D. Informal grievance resolution meetings, grievance meetings, mediation or arbitration meetings and safety meetings held during their work time.

Stewards planning to attend any of the above meetings will provide their supervisor prior notice in order to ensure the Employer's operational needs are met. Off-duty stewards will be allowed access to the worksite to carry out representational activities. Time spent carrying out representational activities while off-duty will not be considered time worked.

#### **2.4 Use of Employer Resources/Equipment**

The Employer's facilities may be used by the Union to hold meetings subject to the availability of the space. The Union and its representatives may use the Employer's phone system, computers, fax machines, and other equipment in order to communicate with its members. Employees may ask clients or their guardians for reasonable permission to use the client's computers, phones, fax machines, and other equipment in order to communicate with bargaining unit members.

#### **2.5 Information Provided to the Union**

The Employer agrees to provide the Union, upon written request, access to materials and information necessary for the Union to fulfill its responsibility to administer this Agreement. When the Union submits a request for information, and the Employer believes it is unclear or unreasonable, the Employer will contact the staff representative to discuss the request. Information requests will be fulfilled within fourteen (14) days of the date of the request. This time frame may be extended with mutual agreement of the parties. The Employer shall provide the Union with the names of new employees within fourteen (14) days after the new employee reports for training. Each month the Employer shall notify the Union in writing of the following personnel transactions involving Bargaining Unit members: promotions, transfers, approved leaves of absence, suspensions, terminations, resignations, and changes to work duty location. Upon written request by the Union, the Employer shall provide a copy of the most recent State audit and current fiscal year budget.

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**2.6 Employer Policies**

The Employer will provide to the Union any new or existing policies affecting represented employees or any updates to policies affecting represented employees made during the term of this agreement. Existing policies will be provided not less than seven (7) days after the effective date of this Agreement. Proposed new policies revised during the term of this Agreement will be provided to the Union not less than thirty (30) days in advance of their proposed implementation date. The Employer and Union will negotiate proposed changes to policies prior to their implementation. Hard copies of current policies, including memorandums from the Employer concerning policy changes, will be maintained in an accessible and clearly identified location at each worksite.

**2.7 Access to Union Information and Rights**

The Employer will maintain binder(s) or reasonable space in existing binders for Union communications at each worksite. Material posted in the binders will be appropriate to the workplace and identified as Union literature. If requested by the Union, the Employer will identify areas where Union-provided newsstands can be located in their offices. In addition, employees may communicate with and distribute Union information to other bargaining unit employees.

**2.8 Time Off For Union Activities**

Union designated employees will be allowed time off to attend Union-sponsored meetings, training sessions, conferences and conventions. The employee may use any paid or unpaid leave available to them in order to attend these functions. The Union will provide the employer with fourteen (14) days advance written notice of the list of employees it is requesting be released to attend the above listed activities.

**2.9 Temporary Employment with the Union**

With thirty (30) days written notice, unless agreed otherwise, employees will be granted leave without pay to accept temporary employment with the Union of a specified

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duration, not to exceed a consecutive twelve (12) months. Upon the employee's return, they will be employed in the same classification at the same location they were employed at prior to their leave commencing.

**2.10 New Employee Orientation/Training**

When newly hired employees receive orientation/training, the Union will be provided the opportunity to speak with the new employee(s) for a period of up to sixty (60) minutes on work time to provide information about the Union and this Agreement. The Employer will provide the Union with at least seven (7) days advance notice of any scheduled new employee orientation/training(s).

**2.11 Collective Bargaining Agreement Negotiations**

The Employer will provide paid release time for preparing for, traveling to and from, and attending formal negotiations for up to five (5) Union team members who are scheduled to work on the day, or night preceding/following, preparations or negotiations are being conducted. Any per diem and travel expenses will be paid by the Union for Union team members.

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**Article 3**

**Union Security**

**3.1** All employees covered by this Agreement will, as a condition of employment, either become and remain members of the Union and pay membership dues, or, in the alternative, as non-members pay a fee as described. This will occur not later than thirty (30) calendar days following her or his date of employment or the execution of this Agreement, whichever is later. Employees who choose not to become Union members will have deducted from their pay a representation fee equal to a pro rata share of collective bargaining expenses rather than the full membership fee. Employees who fail to comply with this requirement shall be discharged by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union, unless the employee fulfills the membership obligations set forth in this Agreement.

**3.2 Notification and Availability of Cards**

The Employer will promptly inform all employees covered by this Agreement of the Union's exclusive recognition and the Union security provision. The Employer will ensure that each employee is provided the Union's form necessary for authorizing the deduction of dues or fees at the same time the Employee is completing all new hiring paperwork. The original form will be provided to the Union within seven (7) days of completion. The Union will supply the Employer with the form necessary for authorizing deductions by the effective date of this Agreement and thereafter when notified by the Employer of a need for additional forms.

**3.3 Deductions of Dues and Fees**

Upon receipt of an appropriate written authorization from the employee, the Employer agrees to deduct from the pay of each employee covered by this Agreement Union membership dues or fees. Deductions will be made within fifteen (15) days of the receipt of a completed authorization form. The Union agrees to provide the Employer with fifteen (15) days advance written notice of any change in the amount of dues or fees

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required. The Employer agrees to remit electronically any deductions made pursuant to this provision to the Union within five (5) days of any deduction with an electronic report showing the following information for each employee:

- A. Employee name
- B. Unique employee identification number and last four digits of social security number
- C. Amount of earned income subject to dues or fees
- D. Amount deducted for dues or fees
- E. Date of hire into bargaining unit position
- F. Date of termination from bargaining unit position
- G. Employee job classification and rate of pay
- H. Employee home mailing address and telephone number
- I. Employee work location(s), including specific county(s)

#### **3.4 Voluntary Deductions**

Upon receipt of an appropriate written authorization from the employee, the Employer agrees to deduct from the pay of any employee who is a member of the Union, the amount authorized for P.E.O.P.L.E. Such authorization must be executed by the employee and may be revoked at any time by giving written notice to both the Employer and the Union. The Employer agrees to remit electronically any deductions made pursuant to this provision to the Union within five (5) days of any deduction with an electronic report showing:

- A. Employee name
- B. Unique employee identification number
- C. Amount deducted for P.E.O.P.L.E.

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Article 4

Non-Discrimination

4.1 Under this Agreement, neither party will discriminate against, intimidate, restrain or coerce any employee in the exercise of rights granted by law or by this Agreement.

4.2 There will be no discrimination against any employee on the basis of race, color, creed, national origin, religion, political affiliation, military status, and status as an honorably discharged veteran, disabled veteran or Vietnam era veteran, age, sex, marital status, sexual orientation, gender identity or expression, any real or perceived sensory, mental or physical disability, genetic information, or because of their participation or lack of participation in Union activities.

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**Article 5**

**Hiring and Appointments**

**5.1 Definition of a Permanent Vacancy**

For purposes of this Article, a permanent vacancy is created when:

- A. The Employer decides to increase the work force to fill new position(s); or
- B. Any of the following personnel transactions take place and the Employer decides to replace the previous incumbent: terminations, promotions or voluntary demotions and related transactions.

**5.2 Posting**

When recruiting for any position covered by this Agreement, and provided there are no candidates on the layoff list, the recruitment announcement will be posted internally for a minimum of ten (10) days. The posting will include the classification, required skills and abilities, rate of pay, work location at which the vacancy is located, applicable shift(s), days off of the vacancy, and whether any of the shift(s) are eligible for assignment pay per Article 26, and will be communicated to all KTSS employees. Vacancies shall be filled no later than thirty (30) days after the last day of posting. Vacancies not filled within the thirty (30) days shall be re-posted per this Article.

**5.3 Layoff Candidates**

Prior to posting a vacant position for recruitment, the Employer will recall the most senior candidate in that job classification from the layoff list in accordance with Article 8, Layoff and Recall.

**5.4 Transfers**

During the internal posting period, any employee working in the same classification as the vacancy may submit a request to transfer into the vacant position. This request will be made in writing and must be submitted to the Human Resource Specialist prior to the

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close of the posting period. If more than one (1) employee submits a request to transfer into the vacancy, the most senior employee submitting a request will be transferred into the vacant position. Transfer opportunities will be provided to all employees of KTSS, regardless of work location.

#### **5.5 Promotions / Internal Candidates**

A. The term promotion as used in this section, means the advancement of an Employee to a higher paying classification and/or a position requiring more skills and ability.

B. Provided there are no requests to transfer into the vacant position, internal promotional candidates will be given first consideration for any posted vacancy. If more than one (1) internal promotional candidate with the skills and abilities necessary for the position applies, the most senior internal candidate will be selected.

C. The Employer will not be required to select for promotion any employee who has had documented performance deficiencies or disciplinary action in the two (2) months immediately preceding the posting of the vacancy.

D. Any promoted employee may request and be granted a return to their former classification and work location within ninety (90) days of the promotion. If their former position has been filled with a permanent replacement, the replacement employee will be considered as having been laid off and will have the right to exercise their rights per Article 8.

#### **5.6 Types of Appointments**

A. Full-Time employees are those hired to regularly work a forty (40) hour schedule per week. The Employer will not schedule less than forty (40) hours per week for an employee hired to regularly work full time, unless the Employer and the

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Employee mutually agree to schedule less than forty (40) hours per week for a temporary period of time.

B. Part-Time employees are those hired to regularly work fewer than forty (40) hours per week. The Employer will not regularly schedule fewer than twenty-four (24) hours per week for those hired to regularly work part time, unless the Employer and the Employee mutually agree to schedule fewer than twenty-four (24) hours per week.

C. On-Call employees are those hired to work intermittently. The Employer may only fill a position with an on-call appointment when the work is intermittent in nature, sporadic and does not fit a particular pattern.

D. Temporary employees are those hired to work for a limited period of time or to work on a particular project that is limited in duration.

1. The Employer may only fill a position with a temporary employee when the purpose is to fill behind a permanent employee on extended leave until their return, during a workload peak, while recruitment is being conducted for a permanent hire or to reduce the effects of a layoff.
2. Temporary appointments will not exceed four (4) months.
3. If a temporary employee is hired to work on a particular project, the specific purpose and duration of the project will be provided, in writing, to the Union prior to the position being filled.

#### **5.7 Permanent Status**

Employees hired to work full time and part time are considered to be permanent.

#### **5.8 Temporary Filling of Vacancies**

A. The Employer may temporarily fill a permanent vacancy for a period not to exceed thirty (30) calendar days. This 30-calendar day period may be extended

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91 by mutual agreement of the Union and the Employer. The Employer shall attempt  
92 to fill a permanent vacancy on a temporary basis with an employee from the same  
93 or the next lower paying job classification, giving due consideration to seniority  
94 and the operating needs of KTSS.

- 95  
96 B. Employees temporarily assigned to another job classification, or required to  
97 perform tasks typically assigned to a higher paid classification, shall receive the  
98 rate of pay for the temporary classification, or her or his regular rate of pay,  
99 whichever is higher, for the duration of the assignment.

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**Article 6**

**Hours of Work and Overtime**

**6.1 Definitions**

A. Workweek

A regularly re-occurring period of one hundred and sixty-eight (168) hours consisting of seven (7) consecutive twenty-four (24) hour periods. Workweeks will begin at 12:00 a.m. on Monday and end at 12:00 a.m. the following Sunday. If there is a change in the workweek, employees and the Union will be given prior written notification by the Employer. The regular hours of work will be consecutive.

B. Workday

One (1) of seven (7) consecutive, twenty-four (24) hours periods in a workweek.

C. Work Shift

The hours an employee is scheduled to work each day in a workweek.

**6.2 Work Schedules**

A. Regular Work Schedules

Other than those on call and employees working in the Supportive Living program, each employee will have a regular, assigned work schedule. The regular work schedule for employees covered by this Agreement will not be more than forty (40) hours in a workweek, with starting and ending times as determined by the requirements of the position and the Employer. The regular work schedule will include two (2) consecutive scheduled days off. Employees working in the Supportive Living program will choose their starting and ending times to complete their regular assigned total number of hours in a workweek.

B. Alternate Work Schedules

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Employees may request alternate work schedules and such requests will be approved by the Employer, except as provided below, subject to demonstrated operational needs. The Employer will consider employees' personal and family needs.

C. Temporary Schedule Changes

Employees' workweeks or work schedules may be temporarily changed with proper notice from the Employer. A temporary schedule change is defined as a change lasting seven (7) calendar days or less. Employees will receive not less than seven (7) days written notice of any temporary schedule change. The day that notification is given is considered the first day of notice.

D. Permanent Schedule Changes

Employees' workweeks or work schedules may be permanently changed with proper notice from the Employer and only when justified by client-needs. Employees will receive thirty (30) days written notice of a permanent schedule change, which will include the justification for the schedule change. The day notification is given is considered the first day of notice. The Employer will consider the employees' personal and family needs prior to implementing a permanent schedule change. If the official work week or work schedule is permanently changed by the Employer, the employee may exercise her or his rights under Article 8, Layoff and Recall.

E. Disputes Regarding Schedule Changes

Disputes regarding changes in schedules or scheduling practices shall be filed at the second level of the Grievance Procedure in Article 23.

F. Filling Emergency Vacancies

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If a permanent position becomes unexpectedly vacant, during the posting period for that position the Employer will fill the position temporarily by offering the shift to Employees in the following order:

- (1) Part-time employees in order of seniority
- (2) On-call employees
- (3) Full-time employees in order of seniority

### 6.3 Meal Periods and Break Time

Paid meal periods for employees working more than five (5) consecutive hours will be a minimum of thirty (30) minutes, and paid breaks will be a minimum of ten (10) minutes for every four (4) consecutive hours worked. Breaks will occur whenever there is a reasonable amount of downtime or as client meal times permit.

### 6.4 Overtime

Overtime is defined as time that an employee works in excess of forty (40) hours in a workweek. In accordance with the applicable wage and hour laws, the overtime rate will be one and one-half (1-1/2) of an employee's regular rate of pay. For the purposes of calculating overtime, hours worked will include all hours spent in pay status, including paid leave. Computation of overtime will be rounded upward to the nearest one-quarter (1/4) of an hour.

### 6.5 Overtime and Open Work Period Procedures

A. Employees who desire opportunities to work overtime or open work periods shall sign up on a list provided for this purpose. When the Employer has reasonable advance notice (at least five (5) hours) of the availability of overtime or an open work period, the Employer shall offer such assignments to qualified employees on the list in the following order: (1) part-time employees in rotating order of seniority, (2) full-time employees in rotating order of seniority. If an employee was not offered overtime for which he or she was qualified, the employee will be offered the next available overtime opportunity for which he or she is qualified.

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89 If the Employer lacks reasonable advance notice of the availability of overtime or  
90 the existence of an open work period, the Employer shall offer the assignment to  
91 employees already at work in the affected location. After doing so, the Employer  
92 shall be free to assign the overtime or open work period in its discretion.  
93

94 B. When involuntary overtime is required, it will be assigned to employees on duty  
95 in inverse order of seniority. The least senior employee, who has not been  
96 previously required to work, will be directed to work the hours until all employees  
97 have been required to work, at which time the process will repeat itself. An  
98 employee may be excused from an involuntary overtime assignment, without  
99 consequences, once per quarter.  
100

101 C. No employee shall be directed or allowed to work more than sixteen (16) hours  
102 continuously for more than two (2) consecutive days.  
103

#### 104 **6.6 Shift Replacements**

105 If the shift replacement for an employee fails to show for work, the Employee will  
106 promptly notify Human Resource Specialist. The Employee shall not be required to stay  
107 for more than three (3) hours, but may choose to stay. These hours worked shall be paid  
108 at the overtime rate. If required or asked to work additional hours outside of the regular  
109 work schedule, an Employee shall not be required to flex these hours as a substitute for  
110 their regular work schedule.  
111

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Article 7

Seniority

**7.1 Definition**

A. Seniority is defined as the total amount of continuous service of an employee for the Employer, regardless of work location or position. For part-time and on-call employees, seniority will be calculated based on the employee's actual hours worked. Actual hours worked also includes all overtime hours and any paid leave or Holiday hours. For the purposes of calculating actual hours worked for part-time and on-call employees, forty (40) hours will equal seven (7) days of seniority. Leave without pay of twenty (20) consecutive calendar days or less will not affect an employee's seniority. When an employee's leave without pay exceeds twenty (20) consecutive calendar days, the employee's seniority will not be affected when the leave without pay is taken for:

1. Military service or United States Public Health Service
2. Work-related injury or illness
3. Educational leave
4. Leave for Union employment or Union activities.

B. When an employee is on leave without pay for more than twenty (20) consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date will be moved forward in an amount equal to the duration of the amount of leave without pay taken.

A. Employees shall serve an initial probationary period of ninety (90) calendar days.

**7.2 Ties**

If two or more employees have the same seniority date, ties will be broken in the following order:

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- 31  
32 A. Longest continuous time in their current job classification;  
33 B. By lot.  
34

35 **7.3 Breaks in Continuous Service**

- 36 A. An employee's continuous service record shall be broken by voluntary  
37 resignation, discharge for just cause, retirement or layoff where the employee is  
38 not recalled pursuant to the applicable provisions of this Agreement.  
39  
40 B. If an employee resigns or quits, and is subsequently rehired by the employer  
41 within one (1) year of the termination of the previous employment, the employee  
42 will regain the seniority held as of the date of termination, plus the time worked  
43 since being rehired, once the employee has worked time equal to the duration of  
44 the break in service.  
45

46 **7.4 Seniority List**

47 The Employer will prepare a seniority list and post at each worksite. The list will be  
48 updated monthly and will contain each employees name, job classification, work location  
49 and seniority date. Each employee will have fifteen (15) days to review the list and  
50 appeal any errors in their seniority date to Human Resources. If the employee does not  
51 make an appeal within fifteen (15) days, the seniority date will be presumed to be correct.  
52 A copy of the list will be provided to the Union each month.  
53  
54

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**Article 8**

**Layoff and Recall**

**8.1 Basis**

A layoff is an Employer-initiated action resulting in the separation of an employee or in employment in a job classification with a lower salary range. Layoffs may occur as a result of a lack of funds, lack of work or a good faith reorganization resulting from justified budgetary shortfalls.

**8.2 Procedure**

Should layoff be necessary, they will be done by inverse order of seniority within the job classification. Employees will receive at least thirty (30) days written notice of their layoff. The notice will include the basis for the layoff and any employment options available to the employee. The Union will be provided with a copy of the notice at the same time it is provided to the employee. The day the notice is issued will be considered the first day of the notice period. Employees will have fourteen (14) days to accept or decline, in writing, any option provided to them. Employees being laid off will be provided with the three (3) highest paying available options, in descending order, as follows:

1. A vacant position in her or his job classification in her or his current work site.
2. A vacant position in her or his job classification in another work site.
3. A vacant position in a lower paying job classification in her or his current work site.
4. A vacant position in a lower paying job classification in another work site.
5. A position held by the least senior employee in her or his job classification in another work site.
6. A position held by the least senior employee in a lower paying job classification in another work site.

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31 **8.3 Salary**

32 Employees, who, as a result of layoff, accept a transfer or bump into another position  
33 within her or his current job classification, will retain their current salary and any  
34 subsequent salary increases will proceed without interruption. Employees who, as a  
35 result of layoff, accept an option to a lower paying job classification, will be paid an  
36 amount equal to her or his current salary, provided it is within the salary range of the new  
37 position. In those cases where the employee's current salary exceeds the salary range of  
38 the new position, the employee will be paid at the top of the salary range for their new  
39 classification.  
40

41 **8.4 Bump**

42 If an employee is bumped by the procedure outlined in Article 8.2, they will be  
43 considered as having been laid off and will have the right to exercise the same options.  
44 Non-bargaining unit members shall not be allowed to bump into bargaining unit  
45 positions.  
46

47 **8.5 Layoff List**

48 The Employer will maintain a list of any employees who are laid off or who, as a result  
49 of layoff, must change work locations or take a position in a lower paying job  
50 classification. This list will be maintained in the order of seniority within classification.  
51 An employee's name will remain on the list for a period of not less than three (3) years.  
52

53 **8.6 Recall**

54 Prior to filling vacancies in accordance with Article 5, Hiring and Appointments, the  
55 Employer will recall an employee from the layoff list, by seniority within classification,  
56 to fill the vacant position with the most senior candidate receiving the first offer. If an  
57 employee is recalled to employment within twelve (12) months, their previously accrued  
58 seniority will be restored.  
59  
60 J

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**Article 9**

**Employee Training and Development**

**9.1 Objective**

The Employer and the Union recognize the value and benefit of education and training designed to enhance employees' abilities to perform their job duties. Training and employee development opportunities will be provided in accordance with operational needs, state requirements and available resources. Attendance at training will be considered time worked.

**9.2 Collective Bargaining Agreement Training**

The Employer and the Union agree that training for managers, supervisors and Union stewards responsible for the day-to-day administration of this Agreement is important. The Union will provide training to Union stewards and the Employer will provide training to managers and supervisors on this Agreement. Stewards will be allowed work time to travel and to and from and to participate in four (4) hours of scheduled training. The Union will provide the Employer with fourteen (14) days advance notice of the date and time that the training is scheduled to occur.

**9.3 Licensure, Registration, Permitting and Certification**

The Employer and the Union recognize the necessity for employees to maintain all forms of appropriate licensure, registration, permitting, and certification to perform the duties of their assigned position. The Employer is responsible for the cost of obtaining and maintaining any license, registration, certification, and permit required to maintain employment.

**9.4 Required Training and Records**

Time spent traveling to and from and attending training required by the Employer will be considered time worked. The Employer will maintain a record of all trainings successfully completed by the employee. If an employee provides documentation of other

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31 work-related training it will be recorded in the training record and retained in the  
32 employee's personnel file. An employee may request a copy of their training record.  
33

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**Article 10**

**Performance Evaluations**

**10.1 Objective**

The Union and the Employer agree that a performance evaluation is not discipline, but instead reflects an employee's performance. Performance appraisals are communicated to an employee to inform that employee of the Employer's perception of her/his performance. The performance evaluation will include performance goals and expectations that reflect the organization's objectives. The performance evaluation will be an interactive process that gives the Employer the opportunity to discuss the performance goals and expectations identified, assess and review the performance of the employee with regard to those goals and expectations, recognize employee accomplishments, address performance issues and provide support to employees in their professional development. In the event work performance problems are identified, both the Employer and the employee are encouraged to offer constructive suggestions and to work together to resolve the problem.

**10.2** Performance evaluations will only be conducted by the Program/Client Coordinator.

**10.3 Evaluation Process**

A. To recognize employee accomplishments and address performance issues in a timely manner, the Program/Client Coordinator and the employee will have discussions throughout the evaluation period. Performance problems will be brought to the attention of the employee to give the employee the opportunity to correct the problem or receive needed training prior to it being mentioned in a performance evaluation. The Program/Client Coordinator will maintain a record of such discussions. This record will be purged following the completion of each evaluation.

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- 30 B. Performance evaluations will be completed no later than ninety (90) days from the  
31 date of hire and then annually thereafter.  
32
- 33 C. The Program/Client Coordinator will discuss the evaluation with the employee.  
34 The employee will have the opportunity to provide feedback on the evaluation.  
35 The discussion may include such topics as:  
36
- 37 1. Reviewing the employee's performance;
  - 38 2. Identifying ways the employee may improve her or his performance;
  - 39 3. Updating the employee's job description, if necessary;
  - 40 4. Identifying performance goals and expectations for the next evaluation  
41 period; and
  - 42 5. Identifying employee training and developmental needs.  
43
- 44 D. The performance evaluation will include an evaluation on forms used by the  
45 Employer, the employee's written signature acknowledging receipt of the forms,  
46 and any comments by the employee.  
47
- 48 E. Performance evaluations will not be used to initiate personnel actions such as  
49 transfer or discipline.  
50
- 51 F. Performance evaluations will be confidential and subject to review or inspection  
52 only by the CEO, Program Manager, Program/Client Coordinator, Human  
53 Resources Specialist, the Employee and the Employee's representative.  
54  
55

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**Article 11**

**Employee Files**

**11.1 Personnel Files**

There will be one (1) official personnel file maintained by the Employer for each employee. Each employee's file will be located in the Employer's administrative office in the city nearest to the employee's primary work location. The Employer may also maintain additional files for the purpose of documenting attendance, payroll and medical information. Employee personnel files will be confidential and subject to review or inspection only by the CEO, Program Manager, Program/Client Coordinator, Human Resources Specialist, the Employee and the Employee's representative.

**11.2 Employee Access to Files**

An employee may examine her or his own files. Review of these files will be in the presence of an Employer representative during the employee's work shift. An employee will not be required to take leave to review their files. An employee may provide a written rebuttal to any information in the files that he or she considers objectionable. The Employer will, upon request, provide the employee and/or their representative with a complete copy of the employee's file/s within fourteen (14) days of the date of the request. A copy of any material to be placed in an employee's personnel file will be provided to the employee. An employee may have documents relevant to her or his work performance placed into her or his personnel file.

**11.3 Removal of Documents**

Adverse material or information related to alleged misconduct that is determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing will be removed from the employee's personnel file. The Employer may retain this information in a legal defense file and it will only be used or released when required by a regulatory agency (acting in their regulatory capacity), in the defense of an appeal or legal action, or as otherwise required by law.

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31

32       Records of disciplinary action will be removed from the employee's personnel file after  
33       six (6) months. Performance evaluations will be removed from the employee's personnel  
34       file after two (2) years.

35

36   **11.4   Medical Files**

37       Medical files will be kept separate and confidential in accordance with state and federal  
38       law.

39

40

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**Article 12**

**Employee Privacy**

**12.1 Confidentiality**

Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent allowed by law. The Employer and the Union will take appropriate steps to maintain such confidentiality.

**12.2 Off-Duty Activities**

The off-duty activities of an employee will not be grounds for disciplinary action unless said activities are detrimental to the operations of the Employer. Employees will report any court-imposed sanctions or conditions that affect their ability to perform assigned duties to the Employer within twenty-four (24) hours or prior to the start of their next scheduled work shift, whichever occurs first.

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**Article 13**

**Discipline**

**13.1 Definition**

The Employer agrees with the tenets of progressive and corrective discipline. Disciplinary actions or measures shall include:

1. Initial verbal reprimand (documented as such)
2. Initial written reprimand
3. Final written reprimand
4. Suspension without pay (notice to be given in writing)
5. Discharges (notice to be given in writing)

Disciplinary action shall be imposed upon an employee only for just cause. Discipline shall be imposed as soon as possible after the Employer is aware of the event or action giving rise to the discipline and has a reasonable period of time to investigate that does not exceed thirty (30) calendar days. Prior to imposing discipline for performance deficiencies, the performance problem will be brought to the attention of the employee to provide them with the opportunity to receive any needed additional training or to correct the problem.

**13.2** When disciplining an employee, the Employer will maintain the privacy and confidentiality of the employee.

**13.3 Investigations**

- A. Upon request, employees have the right to Union representation at investigatory interviews. Employees seeking representation are responsible for contacting their representative.

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B. The role of the Union representative is to provide assistance and counsel to the employee during the investigation. Every effort will be made to cooperate with the investigative process. The Union representative may call for a caucus during the interview to consult with the employee for representational purposes.

C. Employees who are the subject of an investigatory interview will be informed of the allegation/s before they are asked to respond to questions regarding the allegation/s.

#### **13.4 Pre-Disciplinary Meetings**

Prior to imposing discipline, the Employer will inform the employee and the Union staff representative in writing of the reasons for the contemplated discipline, an explanation of the evidence, copies of written documentation relied upon to take the action and the opportunity to review other evidence, if any. The information will be sent to the Union on the same day it is provided to the employee. The employee will be provided an opportunity to respond either at a meeting scheduled for a mutually agreed upon time, or in writing if the employee prefers. A pre-disciplinary meeting with the employer will be considered time worked.

#### **13.5 Notification**

The Employer will provide fourteen (14) days notice prior to the effective date of any discipline greater than a written reprimand. The Union will be provided copies of all disciplinary actions taken, and any actions being placed in the employee's personnel file.

#### **13.6 Suspension Pending Discharge**

The Employer may suspend an employee for up to ten (10) calendar days, pending a decision as to whether to discharge the employee. In the event the discipline ultimately imposed is less severe than the unpaid suspension time served pending discharge, the employee shall be reimbursed for any resulting difference (in base pay at the employee's

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regular rate) between the loss of pay for the unpaid suspension period and the actual discipline imposed.

**13.7 Polygraphs**

No employee will be required by the Employer to take a polygraph examination as a condition of retaining employment with the Employer, nor will an employee be subject to discipline for refusal to take such an examination.

**13.8 Procedures for Client Complaints**

The Employer will update and maintain a procedure for investigating a client's complaints regarding an employee(s). The procedure will include notification to the Employee within two (2) days of the Employer's receipt of the client's complaint, an opportunity for the employee(s) to respond to the complaint's allegations, and the requirement that any investigation by the Employer will conclude within thirty (30) days of notification to the employee(s). If an investigation generated from a client complaint reveals a performance problem it will be brought to the attention of the employee to provide them with the opportunity to receive any needed additional training or to correct the problem. Employee(s) have the right to union representation at any meetings related to client complaint allegations. Employee(s) will not be reassigned to a new work location during the investigation, and any disciplinary actions resulting from a client complaint will be per this Article.

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**Article 14**

**Safety and Health**

**14.1 Objective**

The Employer will provide a safe and healthful work place for its employees. In order to promote the safety of its work force, the Employer agrees to comply with all laws, regulations and safety rules applicable to its operations concerning the safety of employees covered by this Agreement, including but not limited to safety standards established by the Washington Industrial Safety and Health Act (WISHA). The Employer will ensure safe staffing levels at each work site.

**14.2 Safety Equipment and Apparel**

The Employer will provide safety devices, personal protective equipment, training and apparel, including, but not limited to those used in assisting with client mobility, transfers and transporting of clients as required. If necessary, training will be provided to the employee on the safe operation of the equipment prior to use.

**14.3 Health and Safety Committee**

The parties agree that the Employer and Union will form a joint safety committee in accordance with WAC 296-800-13020. The safety committee will consist of two (2) employees selected by the Union and two (2) Employer-selected members. The purpose of the meetings is to identify and correct unsafe or unhealthy working conditions. Meetings of the committee shall be held no less frequently than quarterly, and may be held more frequently as the need arises and as the parties agree. Committee recommendations will be forwarded to the Program Manager for review and action. The Program Manager will report follow-up action/information to the Safety Committee.

**14.4 Safety and Health**

Any employee, who reasonably believes that s/he is being required to perform work which presents a hazard to her/his health or safety or for which s/he is inadequately

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trained, shall report such condition to the Employer-designated Quality Assurance Specialist immediately. When an employee becomes aware of any unsafe or unhealthy work-related condition, the employee shall report such unsafe or unhealthy work-related condition to the Employer-designated Quality Assurance Specialist as soon as practical. Unless the Employer reasonably concludes that no unsafe or unhealthy work-related condition exists, the Employer shall provide such assistance as is necessary to modify the method of performing the job or otherwise alter the circumstances to enhance the safety of the employee. Refusal to perform work which presents a clear and immediate threat to an employee or co-worker's safety shall be a defense to any discipline for refusal to perform such work. Any grievance arising from a dispute regarding the safety of an employee under this Article shall be submitted to the Program Manager at the appropriate step of the Grievance Procedure and the grievance shall be processed as expeditiously as possible under the circumstances.

#### **14.5 Chain of Command for Emergencies**

In the event of a health or safety emergency, including but not limited to, inclement weather, client injury or other emergency, employees will follow these steps:

1. Contact 911 if health or safety emergency, including for aggressive clients.
2. If a health or safety emergency, contact the Program Manager. If an inclement weather or scheduling emergency, contact the Program/Client Coordinator.

These procedures for who to contact will be readily accessible in written form to all employees at each work site.

#### **14.6 Staffing Ratios**

An employee will not be required or allowed to work with more than 4 clients at a time without additional staff present.

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**Article 15**

**Employee Leave**

**15.1** Employer will comply with all applicable federal, state, and municipal leave laws.

**15.2 Vacation Leave**

- A. Temporary, part-time and full-time employees, as defined in Article 5, Hiring and Appointments, who are covered by this Agreement will be eligible for and accrue vacation leave as follows:

During the first year of employment	Five (5) days, which is equivalent to forty (40) hours, per year
During the second through fourth years of employment	Ten (10) days, which is equivalent to eighty (80) hours, per year
During the fifth year of employment and thereafter	Fifteen (15) days, which is equivalent to one hundred twenty (120) hours, per year

- B. Employees will be allowed to take vacation after the end of their probationary period.
- C. Employees will be allowed to accrue and carry forward any unused vacation leave up to a maximum of fifteen (15) days. Vacation leave accrual for part-time employees will be proportionate to the number of hours the part-time employee is in pay status.
- D. The Employer will ensure coverage for all vacation leave.
- E. Vacation leave will be accrued each year on the employee's anniversary date. Vacation leave will be charged in one-quarter (1/4) hour increments.
- F. Employees will submit requests for vacation leave twenty (21) days in advance to the extent possible. The Employer shall make reasonable efforts to approve all requests for vacation, and notify the employee in writing within fourteen (14) days whether the leave has been approved or denied with justification for any

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denial. When two (2) or more employees have submitted requests for the same day/s off, and the Employer must deny one (1) or more requests based on operational needs, vacation leave approval/s will be granted by seniority.

- G. Any employee, who resigns with fourteen (14) calendar days notice, retires, is laid-off or otherwise terminates employment, will be entitled to payment for vacation leave accrued in accordance with this Article.

### 15.3 Sick Leave

- A. Temporary, part-time and full-time employees, as defined in Article 5, Hiring and Appointments, who are covered by this Agreement will be eligible for and accrue eight (8) hours of sick leave per month. Sick leave accrual for part-time employees will be proportionate to the number of hours the part-time employee is in pay status.
- B. Employees will be allowed to accrue and carry forward any unused sick leave up to a maximum of fifteen (15) days.
- C. Sick leave will be accrued the first working day of each calendar month. Sick leave will be charged in one-quarter (1/4) hour increments.
- D. An Employee must promptly notify the Human Resource Specialist on the first day of sick leave and each day after, unless there is mutual agreement to do otherwise. To the extent possible, employees will provide at least thirty (30) minutes advance notice of unanticipated sick leave use. The Employer may request medical verification only for the following reasons:
1. When the Employer has reason to suspect substance abuse and can demonstrate those reasons upon request by the Union or the employee.
  2. When the Employer has determined there is a need for medical certification verifying that the employee is able to safely return to work.
- E. Employees who are separated from employment and recalled in accordance with Article 8, Layoff and Recall, will have restored all sick leave accruals they had at the time of layoff.

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F. Three (3) days or up to twenty-four (24) hours of sick leave per year may be converted to personal time. This time must be requested in advance in the same manner as vacation days and must be used in the employment year granted.

#### 15.4 Jury Duty

Employees will promptly inform the Employer when notified of a jury duty summons. If selected to be on a jury, employees will be released from employment without loss in compensation for the duration of their jury duty service.

#### 15.5 Bereavement Leave

A. An employee will be entitled to three (3) days of paid bereavement leave if her or his family member or household member dies. Should an employee require more than three (3) days of leave, they are entitled to use any combination of their paid leave and leave without pay.

B. For the purposes of bereavement leave, a family member is defined as a parent, step-parent, sibling, parent-in-law, spouse, state registered domestic partner as defined in RCW 26.60.020 and 26.60.030, aunt, uncle, grandparent, grandchild, child and step-child. A household member is defined as someone residing with the employee.

#### 15.6 Military Leave

The Employer will provide paid leave in accordance with The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) in order for employees to report for required military duty, when called, or to take part in training or drills.

#### 15.7 Leave Without Pay

A. An employee may request and will be granted leave without pay for the following reasons:

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1. Family and medical leave taken in accordance with Article 17 of this Agreement;
2. Compensable work-related injury or illness leave;
3. Military leave;
4. Military Family Leave;
5. Domestic Violence Leave in accordance with RCW 49.76;
6. Child and elder care emergencies;
7. As otherwise provided for in this agreement;
8. Conditions applicable for leave with pay; and
9. Where required under applicable municipal, state, and federal law.

B. Employees returning from leave without pay will be employed in the same position, with the same schedule, at the same work site, that they held at the time the leave commenced.

C. Requests for leave without pay will be submitted in writing. Employees will submit requests for leave without pay in advance to the extent possible. The Employer will respond promptly in writing to requests for leave without pay, and no later than three (3) business days after the employee submitted the request.

#### **15.8 Work Related Injury or Illness**

A. The Employer will comply with Title 296 WAC, and all other applicable state and federal laws. An employee who sustains a work related injury or illness that is compensable under the workers' compensation law may elect to use paid leave in addition to any time-loss compensation.

B. Employees will not be required to use FMLA for work related injury or illnesses covered by workers compensation.

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**15.9 Emergency Closure**

A. If a worksite is closed by the Employer due to inclement weather or other emergent circumstances, employees will be notified as promptly as possible and will suffer no loss in pay as a result of the closure.

B. If a worksite remains operational but an employee is unable to report to work due to inclement weather or other emergent circumstances, they are entitled to use any combination of their paid leave and leave without pay.

**15.10 Pay Stub Accounting**

Pay stubs of the employees in the bargaining unit shall indicate levels of paid leave accruals by category.

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Article 16

Holidays

**16.1 Paid Holidays**

Employees will be provided the following paid nonworking holidays per year:

Martin Luther King Day	Third Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

**16.2 Holiday Rules**

The following rules apply to Holidays:

- A. Employees will be paid at the regular straight time rate for all hours they are normally scheduled to work on the Holiday, even though they do not work.
- B. Employees will be paid for the hours actually worked on a Holiday at the overtime rate, in accordance with Article 6, Hours of Work and Overtime.
- C. For employees who are not regularly scheduled to work on the Holiday, the Employer will treat the employee's work day before or after as the Holiday.
- D. The Holiday for night shift employees, whose work shift begins on one calendar day and ends on the next, will be determined by the Employee. It will either start at the beginning of the scheduled night shift that begins on the Holiday or the beginning of the night shift that precedes the Holiday.
- E. The application of these rules will be consistent for all employees covered by this Agreement.

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Article 17

Family and Medical Leave

17.1 A. Consistent with the federal Family and Medical Leave Act of 1993 (FMLA) and the Washington State Family Leave Act of 2006 (WFLA), an employee who has worked for at least twelve (12) months and for at least one thousand two hundred fifty (1,250) hours during the twelve (12) months prior to the requested leave is entitled to up to twelve (12) workweeks of family medical leave in a twelve (12) month period for one or more of the following reasons 1 through 4:

1. Parental leave for the birth and to care for a newborn child, or placement for adoption or foster care of a child and to care for that child;
2. Personal medical leave due to the employee's own serious health condition that requires the employee's absence from work;
3. Family medical leave to care for a spouse, son, daughter, parent, or state registered domestic partner as defined by RCW 26.60.020 and 26.60.030, who suffers from a serious health condition that requires on-site care or supervision by the employee. Because the FMLA does not recognize state registered domestic partners, an absence to care for an employee's state registered domestic partner in accordance with the WFLA will not be counted towards the twelve (12) workweeks of FMLA.
4. Family medical leave for a qualifying exigency when the employee's spouse, child of any age or parent is on active duty or called to active duty status of the Armed Forces, Reserves or National Guard for deployment to a foreign country. Qualifying exigencies include attending certain military events, arranging for alternate childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
5. Military Caregiver Leave will be provided to an eligible employee who is the spouse, child of any age, parent or next of kin of a covered service

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member. Eligible employees may take up to twenty-six (26) workweeks of leave in a single twelve (12) month period to care for the covered service member or veteran who is suffering from a serious illness or injury incurred in the line of duty.

During a single twelve (12) month period during which Military Caregiver leave is taken, the employee may only take a combined total of twenty-six (26) weeks of leave for Military Caregiver Leave and leave taken for the other FMLA qualifying reasons.

The single twelve (12) month period to care for a covered service member or veteran begins on the first day the employee takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established for other types of FMLA leave.

B. Entitlement to family medical leave for the care of a newborn child or newly adopted or foster child ends twelve (12) months from the date of birth or the placement of the foster or adopted child.

C. The one thousand two hundred fifty (1,250) hour eligibility requirement noted above does not count paid time off such as time used as vacation leave, sick leave, or personal holidays.

**17.2** The family medical leave entitlement period will be a rolling twelve (12) month period measured forward from the date an employee begins family medical leave. Each time an employee takes family medical leave during the twelve (12) month period, the leave will be subtracted from the twelve (12) workweeks of available leave.

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59 17.3 The Employer will continue the employee's existing employer-paid health insurance and  
60 benefits during the period of leave covered by family medical leave. The employee will  
61 be required to pay her or his share of insurance premiums.  
62

63 17.4 The Employer has the authority to designate absences that meet the criteria of the family  
64 medical leave. An employee, who meets the eligibility requirements listed in Section  
65 17.1, may request family medical leave run concurrently with absences due to work-  
66 related illness or injury covered by workers' compensation, at any time during the  
67 absence. Any employee using paid leave for a family medical leave qualifying event  
68 must follow the notice and certification requirements relating to family medical leave  
69 usage in addition to any notice requirements relating to paid leave.  
70

71 17.5 The Employer may require certification from the employee's family members or the  
72 covered service member's health care provider for the purpose of qualifying for family  
73 medical leave.  
74

75 17.6 Personal medical leave or serious health condition leave or serious injury or illness leave  
76 covered by family medical leave may be taken intermittently when certified as medically  
77 necessary. Employees must make reasonable efforts to schedule leave for planned  
78 medical treatment so as not to unduly disrupt the Employer's operations. Leave due to  
79 qualifying exigencies may also be taken on an intermittent basis.  
80

81 17.7 Upon returning to work after the employee's own family medical leave qualifying illness,  
82 the employee will be required to provide a fitness for duty certificate from a health care  
83 provider.  
84

85 17.8 The employee will provide the Employer with not less than thirty (30) days' notice before  
86 family medical leave is to begin. If the need for the leave is unforeseeable thirty (30)  
77 days in advance, then the employee will provide such notice as is reasonable and  
88 practicable.

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**17.9 Parental Leave**

A. Parental leave will be granted to the employee for the purpose of bonding with her or his natural newborn, adoptive or foster child. Parental leave may extend up to six (6) months, including time covered by family medical leave, during the first year after the child's birth or placement. Leave beyond the period covered by family medical leave may only be denied by the Employer due to operational necessity.

B. Parental leave may be any combination of the employee's paid leave or leave without pay. The combination and use of paid and unpaid leave will be the choice of the employee.

**17.10 Pregnancy Disability Leave**

A. Leave for pregnancy or childbirth related disability is in addition to any leave granted under FMLA or WFLA.

B. Pregnancy disability leave will be granted for the period of time that an employee is sick or temporarily disabled because of pregnancy and/or childbirth. An employee must submit a written request for disability leave due to pregnancy and/or childbirth. An employee may be required to submit medical certification or verification for the period of the disability. Such leave due to pregnancy and/or childbirth may be any combination of the employee's paid leave or leave without pay. The combination and use of paid and unpaid leave will be the choice of the employee.

**17.11** Definitions used in this article will be in accordance with the FMLA and WFLA. The parties recognize that the Department of Labor is working on further defining the amendments to FMLA. The Employer and the employees will comply with existing and any adopted federal FMLA regulations and/or interpretations.

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**Article 18**

**Reasonable Accommodation**

**18.1 Reasonable Accommodation**

A. The Employer and the Union will comply with all relevant federal and state laws and regulations providing reasonable accommodations to individuals with disabilities. An employee who believes that he or she suffers a disability and requires a reasonable accommodation to perform the essential functions of her or his position may request such an accommodation by submitting a request to the Employer. The Employer will acknowledge receipt of the request and begin processing it within fifteen (15) days.

B. Employees requesting an accommodation must cooperate with the Employer in discussing the need for and possible form of any accommodation. The Employer may require supporting medical documentation. Evidence may be requested from a physician or licensed mental health professional regarding the employee's limitations. The Employer will conduct a diligent review and search for possible accommodations. Medical information disclosed to the Employer will be kept confidential. Upon request, an employee or their representative will be provided a copy of her or his reasonable accommodation file.

C. The Employer will attempt to accommodate the employee in her or his current position prior to looking at accommodations in alternative vacant positions.

**18.2 Disability Separation**

A. An employee may be separated from employment when it is determined that the employee is unable to perform the essential functions of the employee's position due to a mental, physical or sensory disability, which cannot be reasonably accommodated. Determinations of disability may be made by the Employer

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30 based on an employee's written request for disability separation or after obtaining  
31 a written statement from a physician or licensed mental health professional.  
32

33 B. The Employer will provide the employee not less than thirty (30) days written  
34 notice of a disability separation, unless agreed otherwise. This notice will only be  
35 issued after the Employer has documentation of the employee's disability and has  
36 determined that the employee cannot be reasonably accommodated.  
37

38 C. Disability separation is not considered a disciplinary action.  
39  
40

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**Article 19**

**Transportation**

**19.1 Travel**

Employees required to travel in order to perform their duties will be reimbursed for any travel expenses (e.g., mileage, per diem, lodging, meals, parking, ferries, tolls, etc.), in accordance with Internal Revenue Service (IRS) and Department of Health and Human Services (DSHS) regulations and public transit rates. Employees will be reimbursed no later than the pay date following the receipt of the request for reimbursement. Any funds remitted to the Employer for transportation expenses incurred by an employee will be passed through entirely to the employee.

**19.2 Personal Vehicles**

No employee will be required by the Employer to transport clients in personal vehicles as a condition of retaining employment with the Employer, but employees may choose to transport clients in their personal vehicles if they meet the requirements in Article 19.4. Employees may not be subject to discipline for refusal to transport clients, nor will an employee's decision to use or not use a personal vehicle be used to initiate personnel actions such as transfer, discipline, or promotion.

**19.3 Transport Passes**

Each worksite will maintain a monthly transit pass available for staff to use to transport clients.

**19.4 Insurance Requirements**

Employees who maintain automobile insurance in order to transport clients will be reimbursed an additional one-hundred dollars (\$85.00) monthly upon submitting proof of automobile insurance annually upon their anniversary date. Employees not transporting clients are not required to submit proof of automobile insurance.

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31   **19.5   Drivers License Requirements**

32           Employees who choose to transport clients will provide proof of Washington State  
33           Drivers License. No other employees are required to submit their Washington State  
34           Drivers License. Should an employee who is transporting clients have their Drivers  
35           License suspended during employment, that employee will be prohibited from  
36           transporting clients. If the employee is transporting clients, it is the employee's  
37           responsibility to notify the Human Resource Specialist immediately of any change to  
38           your WA Drivers License.  
39

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**Article 20**

**Tools, Equipment and Supplies**

**20.1 Tools, Equipment and Supplies**

The Employer may determine and will provide any necessary tools, supplies, equipment or foul weather gear. The Employer will repair or replace Employer-provided tools and equipment if damaged or worn out beyond usefulness in the normal course of business. Employees will maintain equipment and/or tools in a clean and serviceable condition. The Employer will ensure adequate supplies are available at each of its facilities.

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**Article 21**

**Employer Rights**

Except as modified elsewhere in this Agreement, the Employer retains all rights, powers and duties of management which include, but are not limited to, the right to:

- A. Determine the Employer's functions, programs, organizational structure and use of technology;
- B. Determine and amend the Employer's budget and budgetary priorities;
- C. Direct and supervise employees;
- D. Take all necessary actions to carry out the functions of the Employer during an emergency;
- E. Determine the Employer's mission and strategic plans;
- F. Contract for provision of goods or services, other than those customarily and historically performed by bargaining unit employees; and
- G. Select, hire, assign, evaluate, retain, promote, layoff or discipline employees for just cause.

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**Article 22**

**Employee Rights**

**22.1 Employee Personal Property**

Employees have the right to seek reimbursement for personal property damaged in the proper performance of their job duties, and the Employer will process such requests in a timely manner.

**22.2 Employee Work Location**

Employees will have one (1) official work city. If the official work city is changed, the employee will be given thirty (30) days written notice of the change and the reasons for the change. If the reassignment of the employee's official work city results in a commute in excess of thirty-five (35) miles in addition to the current commute, the employee may exercise her or his rights under Article 8, Layoff and Recall.

**22.3 Right to Representation**

Upon request, employees will have the right to representation at all levels on any matter adversely affecting their conditions of employment. The exercise of this right will not unreasonably delay or postpone a meeting. Except as otherwise provided for in this Agreement, representation will not apply to discussions with an employee in the normal course of business, such as giving instructions, assigning work (not including work location), or other routine communications with an employee.

**22.4 Attendance at Meetings**

Employee travel to and from and attendance at the following types of meetings will be considered work time:

A. Investigatory or disciplinary meetings; and

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B. Informal grievance resolution meetings, grievance meetings, mediation or arbitration meetings, including when subpoenaed as a witness, which are held during their work time.

C. Any meeting at which attendance is mandated by the Employer.

Employees will ensure that they notify their supervisor promptly when attending a meeting in accordance with this Article.

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Article 23

Grievance Procedure

**23.1 Objective**

The Union and the Employer agree that it is in the best interest of all parties to resolve disputes at the earliest opportunity and at the lowest level. The Union and the Employer encourage problem resolution between employees and management and are committed to assisting in resolution of disputes as soon as possible. In the event a dispute is not resolved in an informal manner, this Article provides a formal process for problem resolution.

**23.2 Terms and Requirements**

A. Grievance Definition

A grievance is an allegation by an employee or a group of employees that there has been a violation, misapplication, or misinterpretation of this Agreement, which occurred during the term of this Agreement. The term “grievant” as used in this Article includes the term “grievants.”

B. Filing a Grievance

Grievances may be filed by the Union on behalf of an employee or on behalf of a group of employees.

C. Computation of Time

The time limits in this Article must be strictly adhered to unless mutually modified in writing. Days are calendar days, and will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday or holiday, the last day will be the next day which is not a Saturday, Sunday or holiday. Transmittal of grievances, appeals and responses will be in writing, and timelines will apply to the date of receipt, not the date of postmarking.

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31  
32 D. Failure to Meet Timelines

33 Failure by the Union to comply with the timelines will result in the automatic  
34 withdrawal of the grievance. Failure by the Employer to comply with the  
35 timelines will result in the Employer granting the requested remedies. The parties  
36 may mutually agree to extend any timelines.  
37

38 E. Contents

39 The written grievance must include the following information:  
40

- 41 1. A statement of the pertinent facts surrounding the nature of the grievance;
- 42 2. The date upon which the incident occurred;
- 43 3. The article of the Agreement violated;
- 44 4. The steps taken to informally resolve the grievance and the individuals  
45 involved in the attempted resolution;
- 46 5. The specific remedy requested;
- 47 6. The name of the grievant, or the group if it is a group grievance; and
- 48 7. The name and signature of the Union representative.  
49

50 Failure by the Union to describe the steps taken to informally resolve the  
51 grievance at the time of filing will not be the basis for invalidating the grievance.  
52

53 F. Resolution

54 If the Employer provides the requested remedy or a mutually agreed-upon  
55 alternative, the grievance will be considered resolved and may not be moved to  
56 the next step.  
57

58 G. Withdrawal

59 A grievance may be withdrawn at any time.  
60

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H. Resubmission

If terminated, resolved or withdrawn, a grievance cannot be resubmitted.

I. Pay

Release time will be provided to grievants and union stewards in accordance with Article 22, Employee Rights and Article 2, Union Activities.

J. Consolidation

The Employer and the Union may mutually agree to consolidate grievances arising out of the same set of facts.

K. Bypass

Any of the steps in this procedure may be bypassed with mutual written consent of the parties involved at the time the bypass is sought.

L. Discipline

Disciplinary grievances will be initiated at the level at which the disputed action was taken.

M. Grievance Files

Written grievances and responses will be maintained separately from the personnel files of the employees.

**23.3 Filing and Processing**

A. Filing

A grievance must be filed within thirty (30) days of the occurrence giving rise to the grievance or the date the grievant knew or could reasonably have known of the occurrence. This thirty (30) day period will be used to attempt to informally resolve the dispute with the Program/Client Coordinator.

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B. Processing

**Step 1 – Human Resource Specialist:**

If the issue is not resolved informally with the Program/Client Coordinator, the Union may present a written grievance to the Human Resource Specialist within the thirty (30) day period described above. The Human Resource Specialist will meet or confer by telephone with a Union steward and/or Union staff representative and the grievant within fifteen (15) days of receipt of the grievance, and will respond in writing to the Union within fifteen (15) days after the meeting.

**Step 2 – Program Manager:**

If the grievance is not resolved at Step 1, the Union may request a Step 2 meeting by filing it with the Program Manager within fifteen (15) days of the Union's receipt of the Step 1 decision. The Program Manager will meet or confer by telephone with a Union steward and/or Union staff representative and the grievant within fifteen (15) days of receipt of the appeal, and will respond in writing to the Union within fifteen (15) days after the meeting.

**Step 3 –Chief Executive Officer:**

If the grievance is not resolved at Step 2, the Union may move it to Step 3 by filing it with the Chief Executive Officer within fifteen (15) days of the Union's receipt of the Step 2 decision. The Chief Executive Officer will meet or confer by telephone with a Union steward and/or Union staff representative and the grievant within fifteen (15) days of receipt of the appeal, and will respond in writing to the Union within fifteen (15) days after the meeting.

**Step 4 – Arbitration:**

If the grievance is not resolved at Step 3, the Union may file a request for arbitration. The demand to arbitrate the dispute must be filed with the American

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Arbitration Association (AAA) within thirty (30) days of the Union's receipt of the Step 3 response.

C. Selecting an Arbitrator

The parties will select an arbitrator by mutual agreement or by alternately striking names supplied by the AAA, and will follow the Labor Arbitration Rules of the AAA unless they agree otherwise in writing.

D. Authority of the Arbitrator

1. The arbitrator will:

- a. Have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement;
- b. Be limited in her or his decision to the grievance issue(s) set forth in the original written grievance unless the parties agree to modify it.

2. The decision of the arbitrator will be final and binding upon the Union, the Employer and the grievant.

E. Arbitration Costs

1. The expenses and fees of the arbitrator, and the cost (if any) of the hearing room, will be shared equally by the parties.
2. If the arbitration hearing is postponed or canceled because of one party, that party will bear the cost of the postponement or cancellation. The costs of any mutually agreed upon postponements or cancellations will be shared equally by the parties.
3. If either party desires a record of the arbitration, a court reporter may be used. If that party purchases a transcript, a copy will be provided to the arbitrator free of charge. If the other party desires a copy of the transcript, it will pay for half of the costs of the fee for the court reporter, the original transcript and a copy.

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- 150           4.   Each party is responsible for the costs of its staff representatives,  
151               attorneys, and all other costs related to the development and presentation  
152               of their case. Every effort will be made to avoid the presentation of  
153               repetitive witnesses. The Union is responsible for paying any travel or per  
154               diem expenses for its witnesses, the grievant and the union steward.  
155           5.   If, after the arbitrator issues her or his award, either party files a motion  
156               with the arbitrator for reconsideration, the moving party will bear the  
157               expenses and fees of the arbitrator.  
158

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Article 24

Union-Management Committee

**24.1 Objective**

The Employer and the Union endorse the goal of a constructive and cooperative relationship. To promote and foster such a relationship, the parties agree to establish a Union-Management Committee. Committee meetings will be used for discussion of matters impacting bargaining unit employees and for negotiations regarding mandatory subjects of bargaining. Members of this committee will have clear authority to resolve the issues.

**24.2 Participation and Meetings**

A. The Union-Management Committee will consist of no more than one (1) bargaining unit members each from Bremerton, Port Angeles, and Port Townsend, to be designated by the Union, Union staff representative/s, and no more than four (4) Employer representatives, to be designated by the Employer. Appropriate resource persons may be in attendance at Union-Management Committee meetings for specific agenda items as required.

B. The Union will provide advance notice to the Employer of its committee members, resource persons and any proposed agenda items. The Employer will provide advance notice to the Union of any proposed agenda items.

C. Meetings will be scheduled at least quarterly for a mutually agreed upon date and time and will occur at a mutually agreed upon location. Meetings will occur within thirty (30) days of the receipt of a request for a meeting, unless agreed otherwise.

D. Time spent by designated committee members preparing for, traveling to and from or participating in Union-Management Committee meetings will be

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31 considered time worked. No overtime will be incurred as a result of preparing  
32 for, traveling to and from, and attending Union-Management Committee  
33 meetings.

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Article 25

Benefits

**25.1 Medical**

A. Eligibility

Employees will be eligible for medical benefits after six (6) months of at least part-time employment, as defined in Article 5, Hiring and Appointments. Once eligible, an employee will remain eligible for the duration of their employment.

B. Premium Payments

The Employer will contribute an amount equal to eighty-eight percent (88%) of the employee cost of the medical premium, per month, for all bargaining unit employees for the life of this Agreement. An employee's individual annual deductible may not exceed five hundred dollars (\$500).

C. Opt Out Supplement

Full-time employees may opt out of the insurance coverage if they show written proof of coverage provided elsewhere. Any employee who exercises this right will receive a monthly payment equivalent to fifty percent (50%) of the Employer's monthly premium.

D. Alternative Plans

Within two (2) months of the effective date of this Agreement, the Employer and the Union will meet and discuss alternative plans and funding sources for employee healthcare that would supplement or replace the health insurance products that are currently in place or be added as a new product altogether.

E. Union Healthcare

In the event that the Union creates a healthcare fund or trust, the Employer and the Union will meet and discuss the possibility of converting all healthcare coverage over to the fund or trust, provided that the coverage and costs are substantially the same as the plans in existence at the time.

**25.2 Dental**

Employees will be eligible for dental benefits after six (6) months of at least part-time employment, as defined in Article 5, Hiring and Appointments. The Employer will maintain existing dental contributions and benefit levels for the life of this Agreement.

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34   **25.3   Vision**

35   Employees will be eligible for vision benefits after six (6) months of at least part-time  
36   employment, as defined in Article 5, Hiring and Appointments. The Employer will maintain  
37   existing vision contributions and benefit levels for the life of this Agreement.

38   **25.4   401K**

39   The Employer will maintain a retirement program (401K) and will make deposits in said plan.  
40   The Employee is eligible to participate in the retirement program after six (6) months of at least  
41   part-time employment, as defined in Article 5, Hiring and Appointments, and is 100% vested at  
42   all times. The Employer will match one hundred percent (100%) of an Employee's contribution  
43   to the 401K plan up to an amount equivalent to four percent (4%) of the Employee's gross  
44   income per payroll period. The Employer will match fifty percent (50%) of an Employee's  
45   contribution to the 401K plan for amounts equivalent to between four and up to five percent (4 -  
46   5%) of the Employee's gross income per payroll period.

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**Article 26**

**Compensation**

**26.1 Classifications**

The Employer will provide the Union, not later than three (3) months from the effective date of this Agreement, with a complete job description for all classifications covered by this Agreement. The description will accurately reflect duties currently assigned to each classification. Employees will perform tasks appropriate for their job classification. The Employer shall update and maintain a complete written set of job descriptions for each title within the bargaining unit. The Employer shall provide an employee, upon request, with a copy of the job descriptions for the employee's position. Changes in job descriptions are subject to notification to the Union and shall be subject to impact negotiations if the Union makes a demand.

**26.2 Pay Range Assignments**

Employees will be compensated for all hours worked. As of the effective date of this Agreement, the following wage ranges will be applicable to the classifications as stated below, and employees shall be placed at the appropriate salary step.

Classification	Step 1	Step 2	Step 3	Step 4	Step 5
	Initial	Two (2) Years	Five (5) Years	Seven (7) Years	Ten (10) Years
Direct Service	12.09	12.25	12.85	13.05	14.05
Head of Household	14.09	14.25	14.85	15.05	16.05

Employees, who, as of the effective date of this Agreement, are being compensated at a rate that exceeds the maximum amount of the salary range for their classification, will continue to be compensated at their current salary rate plus 1.5% until such time as the

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employee vacates the position or her or his salary rate falls within the salary range for their current classification.

**26.3 Wages**

Effective January 1, 2013, employees will receive a 3% pay increase; and  
Effective January 1, 2014, employees will receive a 3% pay increase; and  
Effective January 1, 2015, employees will receive a 3% pay increase.

**26.4 Assignment Pay**

Assignment pay is a premium added to the salary rate of employees who are required to perform specialized duties. Employees who are required to bathe, lift, change diapers, or care for aggressive clients receive assignment pay of five cents (\$0.05) per hour for all hours worked. Employees who are staffing two separate work sites simultaneously receive assignment pay of (\$1.00) per hour for all hours worked.

**26.5 Call-Back**

Employees who are contacted outside of their normally scheduled work hours and requested to report to work will receive four (4) hours of compensation at their regular salary rate in addition to all other compensation due.

**26.6 Pre-Tax Health Premiums**

The Employer agrees to provide employees with the option to pay the employee portion of health care premiums on a pre-tax basis as permitted by federal law or regulations.

**26.7 Pay Dates**

Employees' compensation, including wages, leave taken, overtime or any other moneys owed will be paid to the employee as follows:

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A. All compensation earned or money owed to the employee for the period from the first (1<sup>st</sup>) through the thirtieth (30<sup>th</sup>) or thirty-first (31<sup>st</sup>) of the preceding month will be paid to the employee by the fifth (5<sup>th</sup>) of the month.

B. When pay dates fall on a weekend or a Holiday, the day prior to the weekend or Holiday will be considered the pay date.

#### **26.8 Pay Advances**

Pay advances are granted by the Employer in cases where the employee will be on vacation for a period of at least 3 days or more, or in an emergency situation, including but not limited to tuition payments. Pay advances are considered early payments of wages and shall not exceed the net amount of one full paycheck. Requests must be made in writing to the Human Resource Specialist. Should an employee resign or be terminated for cause and have outstanding advances not yet returned to the Employer, s/he shall forfeit that owed money from any existing wages that may be owed to her/him by the Employer.

#### **26.9 Salary Overpayment Recovery**

A. When the Employer has determined that an employee has been overpaid wages, the Employer will provide written notice to the employee which will include the following:

1. The amount of the overpayment,
2. The basis for the overpayment,
3. Verification of the overpayment, and
4. The employee's rights under the terms of this Agreement.

B. Within thirty (30) days of receipt of the notice of salary overpayment, the employee has the option to choose one of the following methods for repayment:

1. Voluntary wage deduction/s,
2. Cash, or

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3. Check.

C. If an employee elects to repay a salary overpayment through voluntary wage deductions, the employee will have the option to repay the overpayment in installments over a period of time equal to the number of pay periods during which the overpayment was made, unless a longer period of time is mutually agreed upon. Deductions taken from wages in accordance with this section will not occur without a completed salary overpayment agreement, signed by the employee. Deductions taken from wages in accordance with this section will not exceed five percent (5%) of an employee's net earnings in a pay period, unless mutually agreed otherwise.

D. If an employee fails to respond to a notice of salary overpayment within thirty (30) days of the date they receive such notice, the Employer may deduct from their wages the amount owed. Deductions taken from wages in accordance with this section will take place over a period of time equal to the number of pay periods during which the salary overpayment was made. Deductions taken from wages in accordance with this section will not exceed five percent (5%) of an employee's net earnings in a pay period.

E. Any dispute concerning the validity of a salary overpayment will be resolved through the process outlined in Article 23, Grievance Procedure.

**26.10 Time/Task Sheets**

Time/Task Sheets are due by the 15<sup>th</sup> and the last day of every month and must be returned to the Human Resource Specialist. If Employer's monthly Confirmation of Hours sheet varies from an employee's actual hours worked, the employee will submit a Change in Hours form and be paid for those hours on the following paycheck.

**26.11 Compensable Time**

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An employee who is consulted by telephone (either voice calls or text messages) related to work issues while off duty away from a job site will be compensated if it exceeds the State L & I employment standard of over 5 minutes and more than 3 times a month. An employee is not required to check email related to work issues outside of work time.

**26.12 Legislative Pass Through**

If during the term of the contract, there is a legislative increase in funding which includes wage and benefit enhancements for bargaining unit employees or the employer receives a cost of living adjustment (COLA) or a cost-of-doing-business adjustment (CODB) increase, the Employer will provide to bargaining unit employees any amount in excess of the negotiated wage and benefit package granted to employees during the fiscal year. Any such increase shall be retroactive to the effective date of the legislative increase. Prior to allocating the increase the Employer shall meet with the Union to negotiate as to how the increase shall be allocated to employees.

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Article 27

Savings Clause and Entire Agreement

27.1 It is the intention of the parties hereto to comply with all applicable provisions of State or Federal law. If any court or administrative agency of competent jurisdiction finds any article, section or portion of this Agreement to be unlawful or invalid, the remainder of this Agreement will remain in full force and effect. If such a finding is made, a substitute for the unlawful or invalid article, section or portion will be negotiated at the request of either party. Negotiations as a result of this provision will commence within thirty (30) days of the date of the request.

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Article 29

Printing of the Agreement

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The Employer and the Union will share the cost of printing this Agreement, including any large print copies. The Agreement will be printed by Union printers, on recycled paper and carry a Union label. The Employer will provide all current and new employees with one (1) copy of the Agreement. The Employer will post the Agreement electronically and ensure a hard copy is kept at each worksite.

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Article 30

Term of Agreement

30.1 All provisions of this agreement will become effective \*TBD and will remain in full force and effect through and including \*TBD. If this Agreement expires while negotiations between the Union and the Employer are underway for a successor Agreement, the terms and conditions of this Agreement will remain in full force and effect for a period not to exceed one (1) year from the expiration date.

30.2 Either party may request negotiations of a successor Agreement by notifying the other party in writing at least ninety (90) days prior to the expiration date. After receipt of such notice, negotiations will commence at a time agreed upon by the parties.





WASHINGTON FEDERATION OF STATE EMPLOYEES  
WFSE/AFSCME - AFL-CIO  
STATE HEADQUARTERS OFFICE  
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501  
(360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

[Sent via Email to glofland@glofland.net]

July 17, 2012

Mr. Gary Lofland  
9 North 11<sup>th</sup> Ave  
Yakima, WA 98902

Re: Kitsap Tenant Support Services Negotiations – Request for Information for HOH

Dear Mr. Lofland,

This letter serves as a request for documents and information regarding KTSS' job descriptions and recruitment postings for Head of Household (HOH) positions.

We had originally requested all job descriptions and memos for HOH and direct service staff on May 22, 2012. On June 11, 2012 we received an email response from KTSS stating that job descriptions could be found in the KTSS manual, but the attached manual contained no job descriptions for HOH positions.

We were recently made aware that KTSS has changed some of the language and job requirements for HOH's. These changes appear to have been made in the HOH job postings. As you are aware KTSS is required to bargain all changes or proposed changes that effects employees working conditions and conditions of employment, including both the decision to do so and the effects of those decisions.

In order to understand these changes we are requesting:

- True and accurate copies of any and all HOH and direct service staff job descriptions and job postings that KTSS has created and used within the last twelve (12) calendar months. The job postings should indicate the position that was open, any work locations, and the date of the job posting announcement.
- Any and all memos created by KTSS regarding HOH and direct service staff job descriptions and job duties within the last twelve (12) calendar months.

We appreciate your prompt attention to this matter.

Sincerely,

Sarah Clifthorne  
Public Service Program Supervisor

Cc: Mike Closser  
Alan Frey

GENERAL COUNSEL  
EXHIBIT NO. 21

www.wfse.org

GENERAL COUNSEL  
EXHIBIT NO. 22

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**Preamble**

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6       This Agreement is made by and between Kitsap Tenant Support Services,  
7   Inc. (KTSS or Employer) and the Washington Federation of State, County, and  
8   Municipal Employees, Council 28 (AFSCME or Union).

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**Purpose**

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This Agreement establishes the wages, hours, and working conditions for bargaining unit employees of KTSS. The parties recognize that KTSS provides habilitative services to developmentally disabled adults. In all cases this Agreement shall be interpreted and applied to foster and encourage that care. The care of those served is the sole and paramount interest.

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**Union Recognition**

KTSS recognizes the Union as the sole and exclusive bargaining representative for the following unit:

All full-time and regular part-time employees working for the Employer as Direct Service Staff (DSS) or Head of Households (HOHs) in the Employer's Intensive Tenant Support Program (ITS) and Direct Service Staff (DSS) working in the Employer's Supported Living Lite Program (SL Lite Programs), including such programs in the Employer's d/b/a, Olympic Peninsula Supported Living (OPSL) operations, located in or about Kitsap County, Port Angeles, and Port Townsend, Washington; excluding employees working in the Homecare division, Head of Households (HOHs) and Direct Service Staff (DSS) working in the Community Protection Program (CP Program) because they are guards as defined by the Act, and all other employees, guards and supervisors as defined in the Act.

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**Union Security**

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1. Employees in the bargaining unit may choose to become and continue membership in the Union or may decline or discontinue Union membership.
2. Neither the Employer nor the Union will discriminate against any employee because of their union membership or lack thereof.

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**Non-Discrimination**

The Employer and the Union agree to maintain a work environment which is free of harassment or discrimination because of sex, race, religion, color, national origin, sexual orientation, physical or mental disability, marital status, age or any other status protected by Federal, State, or local laws.

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## **Management Rights**

### **1. Management Rights**

The Union and the Employees agree that the right to operate and manage the business and the affairs of the Company, the right to select and direct the working forces and the right to control and direct the use of its equipment, facilities and properties are vested solely exclusively in the Company. These rights include, without being limited to, the right of control, determine and change the manner and the extent to which the Company's equipment, facilities and properties shall be operated, increased, discontinued, decreased, or located, and to introduce, operate and change new or improved methods, facilities, techniques and processes; to control, determine and change operations, shifts, experimental, distribution, overtime, training and working assignments and schedules; to select, test, train and determine the ability and qualifications of the employees; to employ, assign, promote, discipline, discharge, lay off, transfer and retire the employees and to determine and make changes in job contents and standards and the size and composition of the work force; to establish, distribute, modify and enforce rules of employee conduct manuals of operating procedures and safety regulations and to control, direct and change facilities and services on Company premises for the use or benefit of the employees; to determine, control and change the methods and sources of its products and services and to obtain from another source and to contract and subcontract for equipment, materials, services and supplies; to maintain discipline and order

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1 and to maintain or improve efficiency within its operations and all other rights  
2 pertaining to the operation, the management of the business and the affairs of  
3 the Company and the establishment and change of conditions of employment  
4 not specifically given in this Agreement to the Union or the employees. To  
5 make and execute contracts and all other instruments necessary or convenient  
6 for the performance of the Employer's duties or exercise of the Employer's  
7 powers, including contracts with public and private agencies, organizations or  
8 corporations and individuals to pay them for services rendered or furnished.  
9 The failure by the Company to exercise any of the rights as provided in this  
10 paragraph shall not be construed as a waiver of these rights.

11  
12 2. Specific Company Action

13 Except when it can be reasonably shown that conduct or action by the Company  
14 is in violation of a specific provision of this Agreement, the exercise by the  
15 Company of its rights to operate and manage business and the affairs of the  
16 Company, to select and direct the working forces and to control and direct the  
17 use of its equipment, facilities and properties shall not be subject to the  
18 grievance procedure or to dispute resolution procedure.

19  
20 3. Reimbursement Changes

21 Recognizing that KTSS is subject to fluctuations in reimbursement rates which  
22 are determined by the Washington Department of Social and Health Services

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1      based upon funding by Washington Legislature, KTSS expressly reserves the  
2      right to change and modify compensation (wages and benefits) resulting from  
3      or caused by Department or Legislative action subject only to providing the  
4      Union with 30 day advance notice of the change.

5

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1    **Union Activity**

2  
3       1. Union Staff Representatives

4       The Union shall provide the Employer with a list of Union Staff  
5       Representatives. That list shall be updated and quarterly.

6  
7       Union staff representatives shall not enter or conduct union business in client  
8       homes or residences, or contact employees while on duty.

9  
10      All contact, meetings, and communications with employees shall be during  
11      non-working time of the employee.

12  
13      2. Union Stewards

14      The Employer shall recognize up to three (3) Union Stewards.

15  
16      All activities of the steward shall be during non-working time of both the  
17      steward and the employee involved unless there is written agreement in advance  
18      by the Employer.

19  
20      The Union shall pay the steward for all representation activities and travel time.  
21      During all such time, the steward shall be considered an employee of the union.

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1 The time spent by the steward in representation activities shall not be  
2 considered KTSS work time for determination of overtime or benefits.

3

4 3. Union Activities

5 Provided the employee provides adequate advance notice according to KTSS  
6 policy and the KTSS operational needs are met without incurring overtime,  
7 employees may be granted unpaid time off to participate in union sponsored  
8 activities.

9

10 The Union shall pay the employees their regular hourly rate for such activities.  
11 Participation in union activities shall not be considered KTSS work time for  
12 computation of overtime or benefits.

13

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## Seniority

### 1. Definition

Seniority is the length of service with KTSS from the most recent date of hire.

2. The Employer shall maintain a seniority list that will be updated each quarter. The seniority list shall be available to employees at the administration office and provided to the Union each quarter.

3. Seniority is applied only in reference to eligibility for and qualification of benefits.

4. Seniority shall be considered broken upon termination, layoff exceeding six (6) weeks, or leave of absence (regardless of reason) in excess of 120 days.

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## Hours of Work

### 1. Work Day

One consecutive twenty-four (24) hour period.

### 2. Work Week

One consecutive seven (7) day period. The work week begins on Monday 12:00 a.m. and ends on Sunday 11:59 p.m. The Employer may change the work week with seven (7) days advance written notice.

### 3. Work Schedule

A. The standard full-time schedule is forty (40) hours per week. The schedule is set by the Employer to meet the needs of each client.

B. Except when necessitated by client needs, the standard work schedule may be changed with fourteen (14) day advance written notice.

### 4. Overtime

Non-exempt employees shall receive one and one-half times their regular hourly rate for all hours in excess of forty (40) hours actively worked per week.

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1 The employer shall attempt to offer overtime to those who have indicated the  
2 desire to work overtime. However, it is recognized that client needs may  
3 require the assignment of mandatory overtime.  
4

5 5. Meal Periods

6 For each five (5) consecutive hours worked, an employee shall receive a paid  
7 thirty (30) minute meal period.  
8

9 6. Rest Breaks

10 For each four (4) hours worked, employees shall receive a paid ten (10) minute  
11 rest break. The parties agree that the requirement of a rest break is satisfied by  
12 the employee taking “intermittent beaks” during the shift.  
13



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### **Layoff/Recall**

#### **1. Layoff**

As the operational needs require, KTSS may lay off employees. Operational needs include, lack of work, loss of client(s), lack of funds, reorganization.

#### **2. Order of Layoff**

KTSS will first ask for volunteers for layoff. In the absence of sufficient volunteers, layoffs will occur based upon client needs.

#### **3. Recall**

Employees who have been laid off will be considered for vacant positions.

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**Performance Evaluations**

Direct Service Staff shall receive an evaluation each year. The purpose of the evaluation is to provide the employee with a “snapshot” of their current performance.

Evaluations may include or result in a performance improvement plan.

Unsatisfactory performance and the failure to meet goals and improvement shall be grounds for discipline, up to and including termination.

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**Personnel Files**

KTSS shall maintain personnel files at its administrative offices in  
Bremerton.

The employee may have access to the personnel file upon reasonable  
advance notice. Employees working out of the Port Angeles office may request to  
review their personnel file be reviewed in the Port Angeles office. Such access and  
review will be allowed as soon as practicable. Employees may allow a union staff  
representative to review the personnel file. The employee shall provide written  
authorization for such review at least ten (10) days in advance.

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**Off Duty Conduct/Activity**

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1. Off duty conduct and activity shall be grounds for disciplinary action, up to and including termination, if such activity is harmful or adverse to the interests of the clients or KTSS or would adversely affect KTSS reputation or ability to do business.
2. Employees shall immediately inform KTSS in writing of any criminal, civil, administrative charges, or complaint that may adversely affect their ability to perform their job.

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**At-Will Employment**

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Employment at KTSS is “at-will”.

4

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## Discipline

### Definition

The Employer agrees that when appropriate, progressive and corrective discipline may be appropriate. Disciplinary actions or measure may include:

A. Initial verbal reprimand (documented as such)

B. Initial written reprimand

C. Final written reprimand

D. Suspension without pay (notice to be given in writing)

E. Discharges (notice to be given in writing)

The step to be utilized and the degree of discipline to be imposed is solely within the judgment and discretion of KTSS.

The failure or refusal of an employee to sign acknowledging receipt of the disciplinary action shall constitute a separate offense and may lead to immediate suspension without pay and result in further discipline.

### Investigations

Upon request, employees have the right to Union representation at investigatory interviews. Employees seeking representation are responsible for contacting their representative.

### Suspension Pending Discharge

The Employer may suspend an employee without pay pending investigation.

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**Safety and Health**

**Objective**

The Employer will continue to provide a safe and healthful work place for its employees. The Employer agrees to continue to comply with all laws, regulations and safety rules applicable to its operations concerning the safety of employees covered by this Agreement, including but not limited to safety standards established by the Washington Industrial Safety and Health Act (WISHA).

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**Employee Leave**

Employer will comply with all applicable federal, state, and municipal leave laws.

**Vacation Leave**

1. Full-time and part-time employees will be eligible for vacation leave as follows:

After completion of one (1) year of employment	Up to forty (40) hours, per year
After completion of fifth (5 <sup>th</sup> ) year of employment and thereafter	Up to eighty (80) hours, per year

2. The vacation earned is determined by determining the average client hours worked each week. (Total client hours for one year divided by 52 equals average hours.)
3. Vacation must be taken in the year following the anniversary date. Vacation is not accrued or accumulated from year to year.

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1 4. Vacation leave will be earned each year on the employee's anniversary date.

2 Vacation leave will be charged in one (1) day increments.

3 5. Employees will submit requests for vacation leave twenty-one (21) days in  
4 advance. The Employer shall make reasonable efforts to approve all  
5 requests for vacation, and notify the employee in writing within fourteen  
6 (14) days whether the leave has been approved or denied with the reason for  
7 any denial. When two (2) or more employees have submitted requests for  
8 the same day(s) off, and the Employer must deny one (1) or more requests  
9 based on operational needs, vacation leave approval(s) will be granted by  
10 seniority.

11 6. Any employee who resigns with fourteen (14) calendar days notice, retires,  
12 is laid-off or otherwise terminates employment will receive payment for  
13 vacation leave earned but no used.

14  
15 Jury Duty

16 Employees will promptly inform the Employer when notified of a jury duty  
17 summons. If selected to be on a jury, employees will be released from  
18 employment.

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1   Emergency Closure

2

3       1. If a worksite is closed by the Employer due to inclement weather or other  
4       emergency circumstances, employees will be notified as promptly as  
5       possible.

6

7       2. If a worksite remains operational but an employee is unable to report to  
8       work due to inclement weather or other emergent circumstances, they may  
9       use their vacation leave.

10

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1

**Holidays**

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Employees who work on Thanksgiving and/or Christmas day shall receive  
one and one-half their regular rate of pay for hours worked.

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## Grievance Procedure

### Terms and Requirements

#### 1. Definition

A grievance is an allegation by an employee or a group of employees that there has been a violation, misapplication, or misinterpretation of this Agreement, which occurred during the term of this Agreement.

#### 2. Filing a Grievance

Grievances may be filed by an employee or employees.

#### 3. Computation of Time

The time limits in this Article must be followed unless mutually modified in writing. Days are calendar days, and will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday or holiday, the last day will be the next day which is not a Saturday, Sunday or holiday. Transmittal of grievances, appeals and responses will be in writing.

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1     4. Failure to Meet Timelines

2         Failure by the Union to comply with the timelines will result in the  
3         automatic withdrawal of the grievance. Failure by the Employer to comply  
4         with the timelines will result in grievance being advanced to the next step.  
5         The parties may mutually agree in writing to extend any timelines.

6  
7     5. Contents

8         The written grievance must include the following information:

- 9  
10        A. A statement of the pertinent facts surrounding the nature of the  
11        grievance;  
12        B. The date upon which the incident occurred;  
13        C. The article of the Agreement violated;  
14        D. The steps taken to informally resolve the grievance and the individuals  
15        involved in the attempted resolution;  
16        E. The specific remedy requested;  
17        F. The name of the grievant, or the group if it is a group grievance; and  
18        G. The name and signature of grievant.

19  
20        Failure by the grievant to describe the steps taken to informally resolve the  
21        grievance at the time of filing will invalidate the grievance.  
22

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1       6. Resolution

2           If the Employer provides the requested remedy or a mutually agreed-upon  
3           alternative, the grievance will be considered resolved .

4  
5       7. Withdrawal

6           A grievance may be withdrawn at any time.

7  
8       8. Resubmission

9           If ultimately terminated, resolved or withdrawn, a grievance cannot be  
10          resubmitted.

11  
12      9. Consolidation

13          The Employer and the Union may mutually agree to consolidate grievances  
14          arising out of the same set of facts.

15  
16      10. Bypass

17          Any of the steps in this procedure may be bypassed with mutual written  
18          agreement of the parties.

19  
20      11. Discipline

21          Disciplinary grievances will be initiated at the level at which the disputed  
22          action was taken.

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1 12. Grievance Files

2 Written grievances and responses will be maintained separately from the  
3 personnel files of the employees.  
4

5 Filing and Processing  
6

7 1. Filing

8 A grievance must be filed within thirty (30) days of the occurrence giving rise  
9 to the grievance or the date the grievant knew or should have known of the  
10 occurrence.  
11

12 2. Step 1 – Human Resource Specialist:

13 If the issue is not resolved informally with the Program/Client Coordinator  
14 (prior to filing the grievance), the grievant may present a written grievance  
15 to the Human Resource Specialist. The Human Resource Specialist will  
16 meet or confer by telephone with the grievant within fifteen (15) days of the  
17 receipt of the grievance, and will respond in writing to the grievant within  
18 fifteen (15) days after the meeting.  
19

20 Step 2 – Program Manager:

21 If the grievance is not resolved at Step 1, the grievant may request a Step 2  
22 meeting by filing it with the Program Manager within seven (7) days of the

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1 Grievant's receipt of the Step 1 decision. The Program Manager will meet  
2 or confer by telephone with the grievant within fifteen (15) days of receipt of  
3 the appeal, and will respond in writing to the grievant within fifteen (15)  
4 days after the meeting.

5  
6 Step 3 – Chief Executive Officer:

7 If the grievance involves termination and is not resolved at Step 2, the  
8 grievant may advance it to Step 3 by filing it with the Chief Executive  
9 Officer within seven (7) days of the grievant's receipt of the Step 2 decision.  
10 The Chief Executive Officer will meet or confer by telephone with the  
11 grievant within fifteen (15) days of receipt of the appeal, and will respond in  
12 writing to the grievant within fifteen (15) days after the meeting.

13  
14 Step 4:

15 If not satisfied with the response of the Chief Executive Officer, the Union  
16 may file a civil complaint in the Superior Court of Kitsap County. Any such  
17 complaint shall be filed and served within forty-five (45) days of receipt of  
18 the Step 3 decision.

19  
20 3. Designation

21 The grievant may designate the union to act in his/her behalf during the  
22 grievance process.

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**Compensation**

1. Rate of Pay

Direct Service Staff Starting: \$10.09

Night Shift CAP: \$10.25

2. Current employees, except night, shift will be “red circled”.

3. The Employer reserves the right to reduce the rates paid if the Department of Social & Health Services reduces the benchmark rate, the Legislature reduces funding, or changes to health care laws and contributions occur. The Employer shall provide at least thirty (30) days notice to the Union of such change.

4. The Employer shall eliminate the current position of HOH effective \_\_\_\_\_. The position shall be replaced with the position Household Manager (HM) which shall be a supervisory position, exempt from the bargaining unit. Current HOH will be considered for HM position.

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**Benefits**

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3 **Health Insurance**

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5 **TBD**

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**Union Obligation**

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3       The Union shall allocate the sum of Six Million Dollars during the year  
4 following the execution of this contract for purposes of lobbying the Washington  
5 Legislature to increase the DSHS DDD benchmark rates.

6

7

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**Most Favored Nation's Clause**

Should the Union extend to any other employer with whom it has a contract, terms and conditions which are more favorable to that Employer than the terms and conditions set forth in this Agreement (including percentage wage reductions/decreases) then such terms and conditions shall automatically be extended and apply to this Agreement.

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**Savings Clause and Entire Agreement**

It is the intention of the parties hereto to comply with all applicable provisions of State or Federal law. If any court or administrative agency of competition jurisdiction finds any article, section or portion of this Agreement to be unlawful or invalid, the remainder of this Agreement will remain in full force and effect. If such finding is made, a substitute for the unlawful or invalid article, section or portion will be negotiated at the request of either party. Negotiations as a result of this provision will commence within thirty (30) days of the date of the request.

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**Term of Agreement**

All provisions of this Agreement will become effective \***TBD** and will remain in full force and effect through and including \***TBD**.

Either party may request negotiations of a successor agreement by notifying the other party in writing at least ninety (90) days prior to the expiration date.

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KTSS PROPOSED POLICY 1

**ALCOHOL & DRUG POLICY**

**1. PURPOSE:**

To establish and enforce a program that eliminates drugs and alcohol in the workplace.

**2. DRUG POLICY:**

Employees must not report for duty, perform service, or enter Company property under the influence or after having used or consumed controlled substances. For purposes of this rule, any employee testing positive for a controlled substance (or its metabolite) in their urine is conclusively presumed to be under the influence of such drugs.

The use, possession or sale of controlled substances, by employees while on duty or on Company property, is prohibited.

**3. PRESCRIPTION MEDICATIONS:**

Employees must not report for duty or perform service under the influence, or be impaired by prescription drugs, medications or other substances that may in any way adversely affect their alertness, coordination, reaction, response or safety.

**4. ALCOHOL POLICY:**

Employees must not report for duty, perform service, or enter Company property with a blood alcohol content greater than 0.00 percent and are prohibited

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1 from the use, possession or sale of alcoholic beverages while on duty or on  
2 Company property.

3 **5. TESTING:**

4 **A. Pre-Employment Screening.** New hires will be required to submit to a  
5 drug screening before reporting to work.

6 New hires will not be permitted to begin working until the test results are  
7 available.

8 **B. Testing - Reasonable Cause/Suspicion.** If facts, circumstances,  
9 physical evidence, physical symptoms, or a pattern of performance or behavior  
10 occur that would cause a supervisor to reasonably conclude that an employee may  
11 have used, or is under the influence of alcohol or a controlled substance, the  
12 supervisor is to contact the Program Manager or designee to discuss the situation.  
13 If it is determined in the sole discretion of the Program Manager or designee that  
14 "reasonable cause" exists that the employee has used or is under the influence of  
15 alcohol or a controlled substance, the employee will be taken to a facility for  
16 testing.

17 **C. On-The-Job Injury.** Any injury on-the-job requiring medical attention  
18 will also require the injured party, and any other employee who may have caused  
19 or contributed to such injury, to submit to a drug/alcohol screening. Supervisors  
20 are to notify the Personnel Manager immediately upon learning of an on-the-job  
21 injury so that the hospital or other treatment facility can be reminded of our drug  
22 program. If an employee seeks medical attention after hours or on the weekend,  
23 and files a claim, he/she will be required to take a drug test immediately upon  
24 Company notification of the injury. Persons refusing to take a test when instructed  
25 to do so, either by their supervisor or the Program Manager, will be terminated.

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1 The test, the refusal to take the test, and its result effects employment and does not  
2 determine eligibility for Industrial Insurance benefits.

3 **D. Random Testing.** Random testing may be conducted. Employees  
4 may be chosen from any designated unit or group. Groupings may be changed.

5 **6. TRANSPORTATION:**

6 **CAUTION:** In all circumstances of suspected drug or alcohol use, it is  
7 necessary to provide transportation for the individual. If the employee refuses to  
8 accept transportation and attempts to drive, advise him/her that the authorities will  
9 be notified immediately.

10 **7. SAMPLE REQUIREMENTS:**

11 Refusal to submit a sample or tampering with the sample during testing shall  
12 result in immediate termination, or if an applicant, disqualification for  
13 employment.

14 **8. RETESTING OF SAMPLE:**

15 Employees or applicants may have the sample given by the employee  
16 retested by the same lab facility. A written notification must be provided to the  
17 Program Manager within forty-eight (48) hours after notification of the test results;  
18 the employee or applicant shall be responsible for all costs of the additional testing.

19 Employees may also submit a contemporaneous blood sample to be tested,  
20 at the employee's expense, for the presence of controlled substances. The  
21 employee must give advance notice to the Company's (Personnel Manager) of the  
22 employee's intent to submit a blood sample. Also, it will be the employee's  
23 responsibility to communicate his/her request for analysis of a blood sample to the  
24 testing facility, and arrange for paying the cost of such testing.

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1    **9. DISCIPLINE:**

2            Violation of this policy shall result in discipline, up to and including  
3    discharge.

4    **10. CONFIDENTIALITY/PRIVACY:**

5            The fact that a test has been requested and administered, the results of that  
6    test, and communications with the employee regarding substance use and abuse are  
7    considered private and confidential. Access to that information is limited to those  
8    who have a legitimate need to know; including internally, the Program Manager,  
9    Administration Assistant, Office Manager, or owner. External communications  
10   shall be based on a case-by-case determination and may include counselors,  
11   medical professionals and law enforcement personnel.

12

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1 KTSS PROPOSED POLICY 2

2 TIME CLOCKS – NIGHT SHIFT

3  
4 KTSS may, at its discretion, require employees who work the night or  
5 graveyard shift to use a time clock and punch in at regular intervals.  
6

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- 1 KTSS reserves the right to change, alter, modify, withdraw, or add to these
- 2 proposals.

**Sarah Clifthorne - 8/15/12 negotiations.**

---

**From:** <glofland@glofland.net>  
**To:** "Sarah Clifthorne" <sarahc@wfse.org>, "Tim Tharp" <timt@wfse.org>  
**Date:** 8/13/2012 2:24 PM  
**Subject:** 8/15/12 negotiations.

---

The DSHS audit of KTSS has begun. As stated in previous meetings, when the negotiations for the 15<sup>th</sup> were set, if the audit took place it would be necessary to cancel. Therefore, it is necessary to cancel the negotiations scheduled for this Wednesday, August 15<sup>th</sup>.

GENERAL COUNSEL  
EXHIBIT NO. 24

**Sarah Clifthorne - Re: 8/15/12 negotiations.**

---

**From:** Tim Tharp  
**To:** Sarah Clifthorne; glofland@glofland.net  
**Date:** 8/13/2012 2:32 PM  
**Subject:** Re: 8/15/12 negotiations.

---

Gary,

This is fairly late notice, as we have already booked the hotel and several rooms for people travelling from Port Angeles. I believe Alan mentioned that the Bremerton audit was complete, so is this the audit for Port Townsend and/or Port Angeles?

We discussed in negotiations that we would set more dates at this coming bargaining session on the 15th. Please let us know what day(s) you will be available to meet in August to bargain so we can plan accordingly.

Regards,  
Tim

Tim Tharp  
Journey Organizer  
WA Federation of State Employees  
1212 Jefferson St SE, Ste 300  
Olympia, WA 98501  
Cell: 360-349-7800  
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>>> <glofland@glofland.net> 8/13/2012 2:24 PM >>>

The DSHS audit of KTSS has begun. As stated in previous meetings, when the negotiations for the 15<sup>th</sup> were set, if the audit took place it would be necessary to cancel. Therefore, it is necessary to cancel the negotiations scheduled for this Wednesday, August 15<sup>th</sup>.

GENERAL COUNSEL  
EXHIBIT NO. 25

**Sarah Clifthorne - request for info & date proposal**

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**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 8/30/2012 12:47 PM  
**Subject:** request for info & date proposal  
**CC:** Tim Tharp

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Dear Mr. Lofland,

We are requesting a copy of the current employee list with job class, work location, date of hire, and pay level, including employees currently working in more than one different program (CP, ITS, SL, OPSL). Until we reach agreement on a first contract, we are requesting this information again anytime an additional employee is hired.

At our last meeting in early August you said you were unavailable for any dates other than September 6 due primarily to the hearing scheduled for late September with us. Since this hearing has been rescheduled, and KTSS also canceled our August 15 bargaining date, we look forward to scheduling additional dates in September. We are available any time the last two weeks (10 business days) of September.

Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
1212 Jefferson St SE, Suite 300  
Olympia, WA 98501  
360.481.0421 (c)  
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1.800.562.6002 (w)

**GENERAL COUNSEL**  
**EXHIBIT NO. 26**

**Sarah Clifthorne - counter proposals from WFSE/AFSCME for KTSS**

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**From:** Sarah Clifthorne  
**To:** glofland@glofland.net  
**Date:** 9/14/2012 4:50 PM  
**Subject:** counter proposals from WFSE/AFSCME for KTSS  
**Attachments:** PREAMBLE\_UC1.docx; ARTICLE\_1\_UC1.docx; ARTICLE\_2\_UC1.docx; ARTICLE\_3\_UC1.docx; ARTICLE\_4\_UC1.docx; ARTICLE\_5\_UC1.docx; ARTICLE\_6\_UC1.docx; ARTICLE\_7\_UC1.docx; ARTICLE\_8\_UC1.docx; ARTICLE\_10\_UC1.docx; ARTICLE\_11\_UC1.docx; ARTICLE\_12\_UC1.docx

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Dear Mr. Lofland,

Attached are 12 counter proposals from our Union. We look forward to discussing them further at our next bargaining session.

At our last bargaining session you had offered to provide us with costs for additional payroll deductions prior to our next bargaining session, but I have not seen this information yet. I hope this information will be available next Monday.

Sincerely,  
Sarah Clifthorne

**Sarah Clifthorne**

Public Service Program Supervisor  
WFSE/AFSCME Council 28  
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**GENERAL COUNSEL**  
**EXHIBIT NO. 27**

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**Preamble**

This Agreement is entered into by Kitsap Tenant Support Services and Olympic Peninsula Supportive Living Services, hereinafter referred to as the “Employer,” and the Washington Federation of State Employees, AFSCME, Council 28, AFL-CIO, hereinafter referred to as the “Union.”

Both parties pledge to further the mission of KTSS by continuously doing their best to improve the quality of care services to all developmentally disabled adults.

This Agreement is intended to establish a basic understanding relative to personnel matters for bargaining unit employees, including wages, hours and working conditions, to provide means for amicable discussions of mutual concerns regarding these subjects and ensure the fair and equitable application of the language herein.

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## Article 1

### Union Recognition

#### **1.1 Recognition**

The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters concerning wages, hours and other conditions of employment for all full and part-time non-supervisory employees employed by the Employer at all business locations, excluding Kitsap Home Care Division employees and employees working exclusively in the Community Protection Program (CP Program).

#### **1.2 New Classification**

In the event that new classifications appropriate to the bargaining unit are established, or the Employer opens additional homes or locations of business employing classifications appropriate to the bargaining unit, these positions will be covered by the terms and conditions of this Agreement.

#### **1.3 Integrity of the Bargaining Unit**

The Employer recognizes the integrity of the bargaining unit and shall not take any action at eroding it.

#### **1.5 Neutrality**

It is the policy of the Employer to support its employees' legal right to freely choose to be represented by a union. The Employer (and its supervisors and agents) will not oppose efforts by any of its employees, including currently unrepresented employees, to be represented by a union.

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## Article 2

### Union Rights

#### **2.1 Union Activity During Working Hours**

An employee(s) shall, with the approval of her/his supervisor which shall not be unreasonably withheld, be allowed time off during that employee's scheduled shift or working hours without loss of pay to attend Labor/Management meetings and Safety Committee meetings provided for under this Agreement.

#### **2.2 Union Business Access**

The Union will provide the Employer with a written list of staff representatives. The Employer will recognize any staff representative on the list. The Union will provide written notice of any changes quarterly. Staff representatives will be allowed access to the Employer's headquarters and field offices, and with reasonable notice will be allowed access to client homes when needed for investigations. Staff representatives may contact bargaining unit employees on work time.

#### **2.3 Union Stewards**

The Union will provide the Employer with a written list of current Union stewards. The Union determines their jurisdiction and maintains the list. A steward may represent any member of a bargaining unit covered by the Union. Union stewards will be granted reasonable time during normal working hours to prepare for, travel to and from and attend representational meetings. This includes, but is not limited to:

- A. Investigatory or disciplinary meetings;
- B. Union Management Meetings; and/or
- C. Informal grievance resolution meetings, grievance meetings, mediation or arbitration meetings and safety meetings held during their work time.

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Stewards planning to attend any of the above meetings will provide their supervisor prior notice in order to ensure the Employer's operational needs are met. Off-duty stewards will be allowed access to the worksite to carry out representational activities. Time spent carrying out representational activities while off-duty will not be considered time worked.

#### **2.4 Use of Client Resources/Equipment**

Employees may ask clients or their guardians for reasonable permission to use the client's computers, phones, fax machines, and other equipment in order to communicate with other bargaining unit members as long as the employee makes reasonable effort to not involve the client in personal affairs.

#### **2.5 Information Provided to the Union**

The Employer agrees to provide the Union, upon written request, access to materials and information necessary for the Union to fulfill its responsibility to administer this Agreement. When the Union submits a request for information, and the Employer believes it is unclear or unreasonable, the Employer will contact the staff representative to discuss the request. Information requests will be fulfilled within fourteen (14) days of the date of the request. This time frame may be extended with mutual agreement of the parties. The Employer shall provide the Union with the names of new employees within fourteen (14) days after the new employee reports for training. Each month the Employer shall notify the Union in writing of the following personnel transactions involving Bargaining Unit members: promotions, transfers, approved leaves of absence, suspensions, terminations, resignations, and changes to work duty location.

#### **2.6 Employer Policies**

The Employer will provide to the Union any new or existing policies affecting represented employees or any updates to policies affecting represented employees made during the term of this agreement. Proposed new policies revised during the term of this

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Agreement will be provided to the Union not less than thirty (30) days in advance of their proposed implementation date. The Employer and Union will negotiate proposed changes to policies prior to their implementation. Hard copies of current policies, including memorandums to all program employees from the Employer concerning policy changes, will be maintained in an accessible and clearly identified location at each worksite.

**2.7 Access to Union Information and Rights**

The Employer will maintain binder(s) or reasonable space in existing binders for the Union contract at each worksite. If requested by the Union, the Employer will include no more than one page (8.5 x 11) of union communications with the employee's pay verification. The material will be appropriate to the workplace and identified as Union literature. In addition, employees may communicate with and distribute Union information to other bargaining unit employees.

**2.8 Time Off For Union Activities**

Up to ten (1) Union designated employees at a time, and no more than one (1) per household, will be allowed time off to attend Union-sponsored meetings, training sessions, conferences and conventions as long as KTSS operational needs may be met without incurring overtime. The employee may use any paid or unpaid leave available to them in order to attend these functions. The Union will provide the employer with fourteen (14) days advance written notice of the list of employees it is requesting be released to attend the above listed activities.

**2.9 Temporary Employment with the Union**

With thirty (30) days written notice, unless agreed otherwise, employees will be granted leave without pay to accept temporary employment with the Union of a specified duration, not to exceed a consecutive three (3) months. Upon the employee's return, they will be employed in the same classification at the same location or work shift they were

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employed at prior to their leave commencing.

#### **2.11 Collective Bargaining Agreement Negotiations**

The Employer will provide paid release time for attending formal negotiations for up to five (5) Union team members who are scheduled to work on the day, or night preceding/following, negotiations are being conducted. Any per diem and travel expenses will be paid by the Union for Union team members.

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**Article 3**  
**Union Security**

**3.1** All employees covered by this Agreement will, as a condition of employment, either become and remain members of the Union and pay membership dues, or, in the alternative, as non-members pay a fee as described. This will occur not later than thirty (30) calendar days following her or his date of employment or the execution of this Agreement, whichever is later. Employees who choose not to become Union members will have deducted from their pay a representation fee equal to a pro rata share of collective bargaining expenses rather than the full membership fee. Employees who fail to comply with this requirement shall be suspended by the Employer within thirty (30) days after receipt of written notice to the Employer from the Union, unless the employee fulfills the membership obligations set forth in this Agreement.

**3.2 Notification and Availability of Cards**

The Employer will promptly inform all employees covered by this Agreement of the Union's exclusive recognition and the Union security provision. The Employer will ensure that each employee is provided the Union's form necessary for authorizing the deduction of dues or fees at the same time the Employee is completing all new hiring paperwork. The original form will be provided to the Union within seven (7) days of completion. The Union will supply the Employer with the form necessary for authorizing deductions by the effective date of this Agreement and thereafter when notified by the Employer of a need for additional forms.

**3.3 Deductions of Dues and Fees**

Upon receipt of an appropriate written authorization from the employee, the Employer agrees to deduct from the pay of each employee covered by this Agreement Union membership dues or fees. Deductions will be made within fifteen (15) days of the receipt of a completed authorization form. The Union agrees to provide the Employer with

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fifteen (15) days advance written notice of any change in the amount of dues or fees required. The Employer agrees to remit electronically any deductions made pursuant to this provision to the Union within five (5) days of any deduction with an electronic report showing the following information for each employee:

- A. Employee name
- B. Unique employee identification number and last four digits of social security number
- C. Amount of earned income subject to dues or fees
- D. Amount deducted for dues or fees
- E. Date of hire into bargaining unit position
- F. Date of termination from bargaining unit position
- G. Employee job classification and rate of pay
- H. Employee home mailing address and telephone number
- I. Employee work location(s), including specific county(s)

### 3.4 Voluntary Deductions

Upon receipt of an appropriate written authorization from the employee, the Employer agrees to deduct from the pay of any employee who is a member of the Union, the amount authorized for P.E.O.P.L.E. Such authorization must be executed by the employee and may be revoked at any time by giving written notice to both the Employer and the Union. The Employer agrees to remit electronically any deductions made pursuant to this provision to the Union within five (5) days of any deduction with an electronic report showing:

- A. Employee name
- B. Unique employee identification number
- C. Amount deducted for P.E.O.P.L.E.

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Article 4

Non-Discrimination

- 4.1 Under this Agreement, neither party will discriminate against, intimidate, restrain or coerce any employee in the exercise of rights granted by law or by this Agreement.
- 4.2 Both parties agree to maintain a work environment which is free of harassment or discrimination against any employee on the basis of race, color, creed, national origin, religion, age, sex, marital status, sexual orientation, mental or physical disability, because of their participation or lack of participation in Union activities, or any other status protected by Federal, State, or local laws.

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## Article 5

### Hiring and Appointments

#### **5.1 Definition of a Permanent Vacancy**

For purposes of this Article, a permanent vacancy is created when:

- A. The Employer decides to increase the work force to fill new position(s); or
- B. Any of the following personnel transactions take place and the Employer decides to replace the previous incumbent: terminations, promotions or voluntary demotions and related transactions.

#### **5.2 Posting**

When recruiting for any position covered by this Agreement, and provided there are no candidates on the layoff list, the recruitment announcement will be posted internally for a minimum of ten (10) days. The posting will include the classification, required skills and abilities, rate of pay, work location at which the vacancy is located, applicable shift(s), days off of the vacancy, and whether any of the shift(s) are eligible for assignment pay per Article 26, and will be communicated to all KTSS employees. Vacancies shall be filled no later than thirty (30) days after the last day of posting. Vacancies not filled within the thirty (30) days shall be re-posted per this Article.

#### **5.3 Layoff Candidates**

Prior to posting a vacant position for recruitment, the Employer will recall the most senior candidate in that job classification from the layoff list in accordance with Article 8, Layoff and Recall unless the client requests otherwise.

#### **5.4 Transfers**

During the internal posting period, any employee working in the same classification as the vacancy may submit a request to transfer into the vacant position. This request will

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be made in writing and must be submitted to the Human Resource Specialist prior to the close of the posting period. If more than one (1) employee submits a request to transfer into the vacancy, the most senior employee submitting a request will be transferred into the vacant position unless the client requests otherwise. Transfer opportunities will be provided to all employees of KTSS, regardless of work location.

#### **5.5 Promotions / Internal Candidates**

- A. The term promotion as used in this section, means the advancement of an Employee to a higher paying classification and/or a position requiring more skills and ability.
- B. Provided there are no requests to transfer into the vacant position, internal promotional candidates will be given first consideration for any posted vacancy. If more than one (1) internal promotional candidate with the skills and abilities necessary for the position applies, the most senior internal candidate will be selected unless the client requests otherwise.
- C. The Employer will not be required to select for promotion any employee who has had documented performance deficiencies or disciplinary action in the two (2) months immediately preceding the posting of the vacancy.
- D. Any promoted employee may request and be granted a return to their former classification within ninety (90) days of the promotion. If their former position has been filled with a regular replacement, the replacement employee will be considered as having been laid off and will have the right to exercise their rights per Article 8.

#### **5.6 Types of Appointments**

- A. Full-Time employees are those hired to regularly work a forty (40) hour schedule

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per week. The Employer will not schedule less than forty (40) hours per week for an employee hired to regularly work full time, unless the Employer and the Employee mutually agree to schedule less than forty (40) hours per week for a temporary period of time.

- B. Part-Time employees are those hired to regularly work fewer than forty (40) hours per week. The Employer will not regularly schedule fewer than twenty-four (24) hours per week for those hired to regularly work part time, unless the Employer and the Employee mutually agree to schedule fewer than twenty-four (24) hours per week.
- C. Temporary employees are those hired to work intermittently, for a limited period of time, or to work on a particular project that is limited in duration.
  - 1. The Employer may only fill a position with a temporary employee when the purpose is to fill behind a permanent employee on extended leave until their return, during a workload peak, while recruitment is being conducted for a permanent hire or to reduce the effects of a layoff.
  - 2. Temporary appointments will not exceed four (4) months.
  - 3. If a temporary employee is hired to work on a particular project, the specific purpose and duration of the project will be provided, in writing, to the Union prior to the position being filled.

#### **5.7 Permanent Status**

Employees hired to work full time and part time are considered to be permanent.

#### **5.8 Temporary Filling of Vacancies**

- A. The Employer may temporarily fill a permanent vacancy for a period not to exceed thirty (30) calendar days. This 30-calendar day period may be extended by mutual agreement of the Union and the Employer. The Employer shall attempt

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to fill a permanent vacancy on a temporary basis with an employee from the same or the next lower paying job classification, giving due consideration to seniority and the operating needs of KTSS.

- B. Employees temporarily assigned to another job classification during more than two (2) consecutive shifts, or required to perform tasks typically assigned to a higher paid classification during more than two (2) consecutive shifts, shall receive the rate of pay for the temporary classification, or her or his regular rate of pay, whichever is higher, for the duration of the assignment.

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## Article 6

### Hours of Work and Overtime

#### 6.1 Definitions

##### A. Workweek

A regularly re-occurring period of one hundred and sixty-eight (168) hours consisting of seven (7) consecutive twenty-four (24) hour periods. Workweeks will begin at 12:00 a.m. on Monday and end at 11:59 P.M. the following Sunday. If there is a change in the workweek, employees and the Union will be given prior written notification by the Employer.

##### B. Workday

One (1) of seven (7) consecutive, twenty-four (24) hours periods in a workweek.

##### C. Work Shift

The hours an employee is scheduled to work each day in a workweek. The regular hours of work will be consecutive.

#### 6.2 Work Schedules

##### A. Regular Work Schedules

Other than those on call and employees working in the Supportive Living program, each employee will have a regular, assigned work schedule. The regular work schedule for employees covered by this Agreement will not be more than forty (40) hours in a workweek, with starting and ending times as determined by the requirements of the position and the Employer. The regular work schedule will include two (2) consecutive scheduled days off. Employees working in the Supportive Living program will choose their starting and ending times to complete their regular assigned total number of hours in a workweek.

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B. Alternate Work Schedules

Employees may request alternate work schedules and such requests will be approved by the Employer, except as provided below, subject to demonstrated operational needs. The Employer will consider employees' personal and family needs.

C. Temporary Schedule Changes

Employees' workweeks or work schedules may be temporarily changed with proper notice from the Employer. A temporary schedule change is defined as a change lasting seven (7) calendar days or less. Employees will receive not less than seven (7) days written notice of any temporary schedule change. The day that notification is given is considered the first day of notice.

D. Regular Schedule Changes

Employees' regular workweeks or work schedules may be changed with proper notice from the Employer and only when justified by client-needs. Employees will receive thirty (30) days written notice of a regular schedule change, which will include the justification for the schedule change. The day notification is given is considered the first day of notice. The Employer will consider the employees' personal and family needs prior to implementing a regular schedule change. If the official work week or work schedule is changed by the Employer, the employee may exercise her or his rights under Article 8, Layoff and Recall.

E. Disputes Regarding Schedule Changes

Disputes regarding changes in schedules or scheduling practices shall be filed at the second level of the Grievance Procedure in Article 23.

F. Filling Emergency Vacancies

If a regular position becomes unexpectedly vacant, during the posting period for

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that position the Employer will fill the position temporarily by offering the shift to Employees in the following order:

- (1) Part-time employees in order of seniority
- (2) Full-time employees in order of seniority

### **6.3 Meal Periods and Break Time**

Paid meal periods for employees working more than five (5) consecutive hours will be a minimum of thirty (30) minutes, and paid breaks will be a minimum of ten (10) minutes for every four (4) consecutive hours worked. Breaks will occur whenever there is a reasonable amount of downtime or as client meal times permit.

### **6.4 Overtime**

Overtime is defined as time that an employee works in excess of forty (40) hours in a workweek. In accordance with the applicable wage and hour laws, the overtime rate will be one and one-half (1-1/2) of an employee's regular rate of pay. For the purposes of calculating overtime, hours worked will include all hours spent in pay status, including paid leave. Computation of overtime will be rounded upward to the nearest one-quarter (1/4) of an hour.

### **6.5 Overtime and Open Work Period Procedures**

- A. Employees who desire opportunities to work overtime or open work periods shall sign up on a list provided for this purpose. When the Employer has reasonable advance notice (at least five (5) hours) of the availability of overtime or an open work period, the Employer shall offer such assignments to qualified employees on the list in the following order: (1) part-time employees in rotating order of seniority, (2) full-time employees in rotating order of seniority. If an employee was not offered overtime for which he or she was qualified, the employee will be offered the next available overtime opportunity for which he or she is qualified. If the Employer lacks reasonable advance notice of the availability of overtime or

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the existence of an open work period, the Employer shall offer the assignment to employees already at work in the affected location. After doing so, the Employer shall be free to assign the overtime or open work period in its discretion.

- B. When involuntary overtime is required, it will be assigned to employees on duty in inverse order of seniority. The least senior employee, who has not been previously required to work, will be directed to work the hours until all employees have been required to work, at which time the process will repeat itself. An employee may be excused from an involuntary overtime assignment, without consequences, once per quarter.
- C. No employee shall be directed or allowed to work more than sixteen (16) hours continuously for more than two (2) consecutive days.

#### 6.6 Shift Replacements

If the shift replacement for an employee fails to show for work, the Employee will promptly notify Human Resource Specialist. The Employee shall not be required to stay for more than three (3) hours, but may choose to stay. These hours worked shall be paid at the overtime rate. If required or asked to work additional hours outside of the regular work schedule, an Employee shall not be required to flex these hours as a substitute for their regular work schedule.

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## Article 7

### Seniority

#### **7.1 Definition**

A. Seniority is defined as the total amount of continuous service of an employee for the Employer, regardless of work location or position. For part-time employees, seniority will be calculated based on the employee's actual hours worked. Actual hours worked also includes all overtime hours and any paid leave or Holiday hours. For the purposes of calculating actual hours worked for part-time employees, forty (40) hours will equal seven (7) days of seniority. Leave without pay of twenty (20) consecutive calendar days or less will not affect an employee's seniority. When an employee's leave without pay exceeds twenty (20) consecutive calendar days, the employee's seniority will not be affected when the leave without pay is taken for:

1. Military service or United States Public Health Service
2. Work-related injury or illness
3. Educational leave
4. Leave for Union employment or Union activities.

B. When an employee is on leave without pay for more than twenty (20) consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date will be moved forward in an amount equal to the duration of the amount of leave without pay taken.

A. Employees shall serve an initial probationary period of ninety (90) calendar days.

#### **7.2 Ties**

If two or more employees have the same seniority date, ties will be broken in the

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following order:

- A. Longest continuous time in their current job classification;
- B. By lot.

### **7.3 Breaks in Continuous Service**

- A. An employee's continuous service record shall be broken by voluntary resignation, discharge for just cause, retirement or layoff where the employee is not recalled pursuant to the applicable provisions of this Agreement.
- B. If an employee resigns or quits, and is subsequently rehired by the employer within six (6) months of the termination of the previous employment, the employee will regain the seniority held as of the date of termination, plus the time worked since being rehired, once the employee has worked time equal to the duration of the break in service.

### **7.4 Seniority List**

The Employer will prepare a seniority list and make it available at each administrative office. The list will be updated quarterly and will contain each employees name, job classification, work location and seniority date. Each employee will have ninety (90) calendar days to review the list and appeal any errors in their seniority date to Human Resources. If the employee does not make an appeal within ninety (90) calendar days, the seniority date will be presumed to be correct. A copy of the list will be provided to the Union each quarter.

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## Article 8

### Layoff and Recall

#### **8.1 Basis**

A layoff is an Employer-initiated action resulting in the separation of an employee or in employment in a job classification with a lower salary range. Layoffs may occur as a result of a lack of funds, loss of client(s), lack of work or a good faith reorganization resulting from justified budgetary shortfalls.

#### **8.2 Procedure**

The Employer will first ask for volunteers for layoff. In the absences of sufficient volunteers, layoffs will be done by inverse order of seniority within the job classification. Employees will receive at least thirty (30) days written notice of their layoff. The notice will include the basis for the layoff and any employment options available to the employee. The Union will be provided with a copy of the notice at the same time it is provided to the employee. The day the notice is issued will be considered the first day of the notice period. Employees will have fourteen (14) days to accept or decline, in writing, any option provided to them. Employees being laid off will be provided with the three (3) highest paying available options, in descending order, as follows:

1. A vacant position in her or his job classification in her or his current work site.
2. A vacant position in her or his job classification in another work site.
3. A vacant position in a lower paying job classification in her or his current work site.
4. A vacant position in a lower paying job classification in another work site.
5. A position held by the least senior employee in her or his job classification in another work site.
6. A position held by the least senior employee in a lower paying job classification in another work site.

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### **8.3 Salary**

Employees, who, as a result of layoff, accept a transfer or bump into another position within her or his current job classification, will retain their current salary and any subsequent salary increases will proceed without interruption. Employees who, as a result of layoff, accept an option to a lower paying job classification, will be paid an amount equal to her or his current salary, provided it is within the salary range of the new position. In those cases where the employee's current salary exceeds the salary range of the new position, the employee will be paid at the top of the salary range for their new classification.

### **8.4 Bump**

If an employee is bumped by the procedure outlined in Article 8.2, they will be considered as having been laid off and will have the right to exercise the same options. Non-bargaining unit members shall not be allowed to bump into bargaining unit positions.

### **8.5 Layoff List**

The Employer will maintain a list of any employees who are laid off or who, as a result of layoff, must change work locations or take a position in a lower paying job classification. This list will be maintained in the order of seniority within classification. An employee's name will remain on the list for a period of not less than three (3) years.

### **8.6 Recall**

Prior to filling vacancies in accordance with Article 5, Hiring and Appointments, the Employer will recall an employee from the layoff list, by seniority within classification, to fill the vacant position with the most senior candidate receiving the first offer unless the client requests otherwise. If an employee is recalled to employment within twelve (12) months, their previously accrued seniority will be restored.

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## Article 10

### Performance Evaluations

#### **10.1 Objective**

The Union and the Employer agree that a performance evaluation is not discipline, but instead reflects a snapshot of an employee's performance. Performance appraisals are communicated to an employee to inform that employee of the Employer's perception of her/his performance. The performance evaluation will include performance goals and expectations that reflect the organization's objectives. The performance evaluation will be an interactive process that gives the Employer the opportunity to discuss the performance goals and expectations identified, assess and review the performance of the employee with regard to those goals and expectations, recognize employee accomplishments, address performance issues and provide support to employees in their professional development. In the event work performance problems are identified, both the Employer and the employee are encouraged to offer constructive suggestions and to work together to resolve the problem.

- 10.2** Performance evaluations will only be conducted by the Program/Client Coordinator, but may include input from the Quality Assurance Specialists.

#### **10.3 Evaluation Process**

- A. To recognize employee accomplishments and address performance issues in a timely manner, the Program/Client Coordinator and the employee will have discussions throughout the evaluation period. Performance problems will be brought to the attention of the employee to give the employee the opportunity to correct the problem or receive needed training prior to it being mentioned in a performance evaluation. The Program/Client Coordinator will maintain a record of such discussions.

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- B. Performance evaluations will be completed no later than ninety (90) days from the date of hire and then annually thereafter.
- C. The Program/Client Coordinator will discuss the evaluation with the employee. The employee will have the opportunity to provide feedback on the evaluation. The discussion may include such topics as:
  - 1. Reviewing the employee's performance;
  - 2. Identifying ways the employee may improve her or his performance;
  - 3. Updating the employee's job description, if necessary;
  - 4. Identifying performance goals and expectations for the next evaluation period; and
  - 5. Identifying a performance improvement plan, including employee training and developmental needs.
- D. The performance evaluation will include an evaluation on forms used by the Employer, the employee's written signature acknowledging receipt of the forms, and any comments by the employee.
- E. Performance evaluations will not be used to initiate personnel actions such as transfer or discipline.
- F. Performance evaluations will be confidential and subject to review or inspection only by the CEO, Program Manager, Program/Client Coordinator, Human Resources Specialist, the Employee and the Employee's representative.

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## **Article 11**

### **Employee Files**

#### **11.1 Personnel Files**

There will be one (1) official personnel file maintained by the Employer for each employee. Each employee's file will be located in the Employer's administrative office in Bremerton. The Employer may also maintain additional files for the purpose of documenting attendance, payroll and medical information. Employee personnel files will be confidential and subject to review or inspection only by the CEO, Program Manager, Program/Client Coordinator, Human Resources Specialist, the Employee and the Employee's representative.

#### **11.2 Employee Access to Files**

An employee may examine her or his own files. Employees working outside of the Bremerton area may request to review their files at the administrative office location nearest to their primary work location. An employee will not be required to take leave to review their files. An employee may provide a written rebuttal to any information in the files that he or she considers objectionable. The Employer will, upon request, provide the employee and/or their representative with a complete copy of the employee's file/s within fourteen (14) days of the date of the request. A copy of any material to be placed in an employee's personnel file will be provided to the employee. An employee may have documents relevant to her or his work performance placed into her or his personnel file.

#### **11.3 Removal of Documents**

Adverse material or information related to alleged misconduct that is determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing will be removed from the employee's personnel file. The Employer may retain this information in a legal defense file and it will only be used or released when required by a regulatory agency (acting in their regulatory capacity), in the defense of an

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appeal or legal action, or as otherwise required by law.

Records of disciplinary action will be removed from the employee's personnel file after six (6) months.

#### **11.4 Medical Files**

Medical files will be kept separate and confidential in accordance with state and federal law.

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## Article 12

### Employee Privacy

#### **12.1 Confidentiality**

Employees have the right to confidentiality related to individual performance, personal information and personnel issues to the extent allowed by law. The Employer and the Union will take appropriate steps to maintain such confidentiality.

#### **12.2 Off-Duty Activities**

The off-duty activities of an employee will not be grounds for disciplinary action unless said activities are detrimental to the clients or operations of the Employer. Employees will report any court-imposed sanctions or conditions that affect their ability to perform assigned duties to the Employer within twenty-four (24) hours or prior to the start of their next scheduled work shift, whichever occurs first.